SEDFRE
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Jefferson Bank & Trust vs Curtis, Robert et al, Aug., 1963 - May, 1965 Box 37 Folder 31
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REVISED STATUTES OF MISSOURI - - 1959 AS AMENDED

Sec. 476.110. ACTS CONSTITUTING CONTEMPT OF COURT

Every court of record shall have power to punish as for criminal contempt persons guilty of

(1) Disorderly, contemptuous or insolent behavior committed during its session, in its immediate view and presence, and directly tending to interrup its proceeding or ti impair the resp ect due to its authority;

(2) Any brea ch of the peace, noise or other disturbance directly tending to interrupt its proceedings;

(3) Willful disobedience of any process or order lawfully issued or made by it;

(4) Resistance willfully offered by any person to the lawful order or process of the court;

Sec. 476.120 PUNISHMENT FOR CONTEMPT

Punishment for contempt may be by fine or imprisonment in the jail or the county where the court may be sitting, or both, in the discretion of the court.

SUPREME COURT RULES - STATE OF MISSOURI

A. RULES OF CRIMINAL PROCEDURE

35.01 A criminal contempt * * * shall be prosecuted on notice. The notice shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense, and shall state the exxential facts constituting the criminal contempt charged and describe it as such. The notice shall be given orally by the judge in open court in the presence of the defendant or, on application of the prosecuting attorney or an attorney appointed by the court for that purpose, by an order to show cause or an order of arrest.

B. RULES OF CIVIL PROCEDURE

92.15 Violation of Injunction - - how punished

If any person disobey or violate an injunction after it is served on him, the circuit court to which it is returned, or any judge thereof in vacation, shall issue an attachment against him for a contempt; and unless he shall disprove or purge the contempt, if in vacation, the judge may commit him to jail until the sitting of the court in which the injunction is pending, or take ba il for his appearance in said court at the next sitting thereof, to answer for the contempt, and to abide the order of the court, and, in the meantime, to observe and obey the injfiction.

THE CIRCUIT COURT OF THE CITY OF ST. LOUIS BY ITS ADJUDICATION THAT PETITIONERS IN FORD ET AL AND GRAND ET AL WERE BOUND BY A JUDGMENT RENDERED IN AN EARLIER LITIGATION (JEFFERSON BANK AND TRUST COMPANY VS. ROBERT B. CURTIS ET AL , CAUSE NO 57945) TO WHICH THEY WERE NOT PARTIES, PRIVIES OR MEMBERS OF A CLASS, DEPRIVED THEM OF DUE PROCESS OF LAW AS GUARANTEED BY THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION.

I

A PERSON MUST BE A PARTY OR IN PRIVITY WITH A PARTY IN ORDER TO BE BOUND BY AN INJUNCTION OR ANY OTHER JUDGMENT IN PERSONAM

On the 25th of October, 1963 the Circuit Court of the City of St. Louis found petitioners in Ford et al and Grand et al guilty of criminal contempt of court for violating an ex parte injunction issued on August 30 1963 against Robert B. Curtis, William L. Clay, Charles R. Oldham, Lucian Richards, Richard Daly, Walter Hayes, Rev. Charles Perkins, Norman Seay, Herman Thompson, Melvin West, individually and as representatives of a class known as St. Louis Committee of Racial Equality, Cause No. 57945 Tr_____). These petitioners were neither parties to the injunction suit nor were they members of St. Louis CORE. It was never alleged nor did the Court make a finding of fact that these petitioners were members of CORE or parties to the restraining order, and yet all petitioners were found guilty of contempt of court and sentenced to jail terms from 60 days to one (1) year in the City Jail and fined $500 dollars each Tr_____). It is clear that the St. Louis Circuit Court injunction only purported to bind the named defendants and members of CORE.

It is the very essence of due process that a person has a right to be heard before his legal relationships ware determined by a court. This right applies to all actions in personam in law and equity. Pennover v. Neff, 95 US 714, 24 L Ed 565; Mullane v. Central Hanover Bank and Trust Co. 339 US 306, 70 S Ct 652; Gorka v. Gorka, Mo. 295 SW 515. Courts have no power to affect the legal relationships of persons not parties to an action or in privity with parties and a decree issued against one over whom the court lacks jurisdiction of no effect. Harris v. Hardeman, 14 H oward 334; Webster v. Reid, 11 Howard 437; Hansberry v. Lee, 61 S Ct 115. It is quite apparent then that petitioners in Ford et al and Grand et al were not bound by the injunction issued by the St. Louis Circuit Court because they were not parties to the decree. This is a principle of general application in Anglo-American jurisprudence.

Furthermore a judgment of a state court if obtained without due process over defendants in personam may be collaterally attacked either defensively or aggressively. Essanay Film Mfg Co. v. Kone, 42 S Ct 318; Kilbourn v. Thompson, 103 US 168. The United States Supreme Court

covers this point exaustively in Hansberry v. Lee 61 S. Ct 115 where the court reversed the judgment of the Illinois Supreme Court which had upheld a decree enforcing a restrictive covenant against a person not a party to the agreement. The court said at page 117:

> "But when the judgment of a state court ascribing to the judgment of another court the binding force and effect of res judicata, is challenged for want of due process it becomes the duty of this Court to examine the course of procedure in both litigations to ascertain whether the litigant whose rights have thus been adjudicated has been afforded such notice and opportunity to be heard as are requisite to the due process which the Constitution prescribes. Western Life Indem. Co. v. Rupp 235 US 261, 273, 35 S Ct 37
>
> It is a principle of general application in Anglo-American jurisprudence that one is not bound by a judgment in personam in a litigation in which he is not designated as a party or to which he has not been made a party by service of process. Pennover v. Neff, 95 US 714, 24 L Ed 565; Freeman on Judgments, 5th Ed Sec 407 A Judgment rendered in such circumstances is not entitled to the full faith and credit which the Con stitution and statute of the United States RS Sec 905, 28 USC 687, 28 USCA 687, prescribe (citing cases) and judicial action enforcing it against the person or property of the absent party is not that due process which the Fifth and Fourteenth Amendments requires. Postal Telegraph Cable Co. v. Newport, 247 US 464, 38 S SCt 566, 62 L Ed 1215; Old Wayne Mut. L. Ass'n v. McDunough, 204 US 8, 27 S Ct 236, 51 L Ed 345" (Emphasis supplied)

Therefore the modern doctrine is that the jurisdiction of a court or other tribunal to render a judgment affecting individual rights is always open to inquiry when the judgment is relied on in any other proceeding. This doctrine has uniformly been held to apply to injunctions and contempts of court based on violation of an injunction. Judge Learned Hand for the court in Alemite Mfg Corporation v. Staff, 42 F 2d 832 voided a judgment wherein a stranger was convicted of contempt for violating an injunction to which he was not a party. The Court said at page 833:

> "On the otherhand no Court can make a decree which will bind anyone but a party; a court of equity is as much so limited as a court of law; it cannot lawfully enjoin the world at large no matter how broadly it words its decree. If it assumes to do so, the decree is pro tanto brutum fulmen, and the persons enjoined are free to ignore it; it is not vested with sovereign powers to declare conduct unlawful; its jurisdiction is limited to those over whom it gets personal service and who therefore can have their day in court.
>
> .....Upon proceeding to punish for contempt the propriety of the decree is not open, even though, it be founded upon an unconstitutional statute. (sic) The respondent may only deny any knowledge of the decree, or that his act

> was within it. The unlawfulness of his conduct has been determined, and if he has not been a party and he has had no day in court, he is condemned without hearing. It is by ignoring such procedural limitations that the injunction of a court of equity may slow steps to be made to realize the worst fears of those who are jealous of its prerogative. The District Court had no more power in the case at bar to punish the respondent than a third party who had never heard of the suit."(Emphasis supplied)

It should be noted that in Alemite Mfg Corp. v. Staff, supra, a decree was entered against John "his agents, employees, associates and confederates" enjoining them from"infringment". Joseph, the person convicted of contempt was a salesman for John at the time the decree was issued, but quit before being charged with contempt. The fact that he know of the injunction never was doubted; but even though committing certain acts that would have been violations if he had been a party, the Court held that in reality the injunction was not violated since only a person bound by an injunction can do so. See United Pharmacal Corp v. U. S. 306 F2d 515; 97 ALR 2d 485.

The authorities seem to be unamimous that injunctions may not be enforced in state or federal courts against those who ate not parties there to. Scott v. Donald 165 US 107, 17 S Ct 262, the United States Supreme Court has upheld this position many times. In Regal Knitwear Co. v. NLRB, 65 S Ct 478 the Court said at page 481:

> "The courts nevertheless may not grant enforcement order or injunction so broad as to make punishable the conduct of persons who act independently and whose rights have not been adjudged according to law. Chase National Bank v. Norwalk 291 US 431, 436, 437, 54 S Ct 475, 477, 78 L Ed 894; Hitchman Coal and Coke Co. v. Mitchell, 245 US 229, 234, 38 S Ct 65, 62 L Ed 260, LRA 1918 C, 497 Ann C s 1918B, 461; Scott v. Donald 165 US 107, 117, 17 S Ct 262, 265, 41 L Ed 648; Alemite Mfg Corp. v. Staff, 2 Cir, 42 F2d 832."

And the famous case of United States v. United Mine Workers of America, 67 S Ct 677, a case that has been cited frequently in support of the courts broad power to punish for contempt, the words make it quite clear that only parties are to be the subject of judicial enforcement of court orders, the court said at page 696:

> "Proceeding futther, we find impressive authority for the proposition that an order issued by a court with jurisdiction over the subject matter and person must be obeyed by the parties until it is reversed by orderly and proper proceedings." (Emphasis supplied)

Thus far we have seen that the petitioners in Ford et al and Grand et al. were not parties to the injunction suit nor members of CORE and therefore were not bound by the injunction issued in Jefferson Bank and Trust Company v. Curtis et al on August 30, 1963. If these petitioners are to be held as guilty of contempt of court it must be on some theory other than that they were bound by the injunction and violated it.

II

A STRANGER CANNOT BE ADJUDGED IN CONTEMPT OF COURT FOR VIOLATION OF AN INJUNCTION UNLESS HE ACTS IN CONCERT WITH A PERSON WHO IS A PARTY TO THE INJUNCTION.

It is a generally accepted rule of law that a stranger or a person not bound by an injunction may be convicted of contempt of court if he aids or acts in concert with one who is bound by the injunction. Ex parte Lennon, 166 US 548, 17 S Ct 6588. United Pharmacal Corp. v. United States 306 F2d 515, 97 ALR 2d 485; Alemite Mfg Corp. v. Staff, supra In United Pharmacal Corp. v. United States the Court said at page 517, 518:

> "The question is whether United and its officers aided and abetted Melabolic in violating the preliminary injunction for as the late Judge Learned Hand pointed out in Alemite Mfg Corp. v. Staff, 42 F2d 832, 833 (Ca2, 1930) 'the only occasion when a person not a party may be punished is when he has helped to bring about not merely what the decree has forbidden, because it may have gone too far, but what it has power to forbid, an act of a party. This means that the respondent must either abet the defendant (i.e. the person enjoined) or must be legally identified with him.' Wherefore as Judge Hand went on to point out, if the person enjoined is not involved in the contempt, an employee, and by the same token one in active concert or participation cannot be either, because the decree may forbid, but only that act when the defendant does it.' Ibid See also Reich v. United States, 239 F2d 134 (CA 1,1956), cert denied, 352 US 1004, 77 S Ct 563, 1 L Ed2d 549 (1957)." Emphasis supplied)

It should be noted here that on October 4, 1963 and October 7, 1963, when petitioners in Ford et al and Grand et al. respectively were cited for contempt, none of the defendants in Jefferson Bank v. Curtis et al. were accused of violating the injunction on either of those two days. It is perfectly true that 8 persons plus their attorney were cited on August 30, 1963 but there was no connection between the three separate cases and no complicity was alleged (Tr_____).

However Judge Scott in his Finding of Fact and Judgment ruled that Ford et al and Grand et al acted in concert with Curtis et al. This ruling was made even though all the evidence showed that Ford et al. and Grand et al acted intependently of Curtis et al and at different times. Also there were no allegation of this nature contained in the Order to Show cause (Tr_____) or Notice (Tr_____). The pertinent part of this Finding of Fact and Judgment reads as follows:

> "It is further found that Michaela Grand, with actual notice as aforesaid and acting in concert and participating with and aiding and abetting one or more of the persons named as defendants in the aforesaid Jefferson Bank and Trust Company v. Robert Curtis, et al, did wilfully disobeyaand violate said Restraining Order by:"

Therefore, petitioners, were found guilty of aiding and abetting violation of the restraining order but were never accused of doing so in the order to show cause or notice of contempt. Petitioners did not have an opportunity to defend against that specific finding of fact since it was not alleged. Furthermore, even in the Finding of Fact Judgment the petitioners were not informed of the name or the idenity of the persons they are supposed to have aided and abetted or the manner in which the enjoined persons acted in concert with them. Nor is any explanation given as to how these petitioners could be guilty of aiding and abetting when none of the persons bound by the injunction was accused of violating the injunction on October 4th or 7th. See Scott v. Donald, supra; Alemite Mfg Corp. v. Staff, supra.

The right to know what one is charged with is a generally accepted rule of law and is essential to due process. This principle applies to cases of criminal contempt; therefore an alleged eontemnor is entitled to a notice which fairly and fully informs him of the specific acts of contempt of which is charged.[1] G. v. Souder Mo App 305 Sw 2d 883; U.S. v. Cruikshank, 92 US 542; Compers v. Buck's Stove etc. co. 221 US 446, 31 S Ct 492

Therefore a petition (order to show cause or notice) in criminal contempt is insufficient as a matter of law if it does not allege how the alleged contemnor acted in concert and participated with the enjoined defendants in violating the restraining order. United States v. Dean Rubber Mfg. Co., 71 F Supp 96; these standards of due process apply to the states. In re Oliver 333 US 257; In re Green, 368 US 689.

It goes without saying that "acting in concert and aiding and abetting" are the most important factors in these contempt cases, because

if proved, they provide the only legal and factual basis upon which convictions of a stranger to the decree can be based. Since petitioners were not accused of aid and abetting anyone they were not fully informed of the charges against them and did not know what to defend against. Therefore the order to show cause in Ford et al (Tr._____) and notice in Grand et al (Tr_____) are fatally defective in that they fail to state grounds upon which a stranger can be found guilty and the fact that Judge Scott made a finding of "acting in concert" is of no avail because it constitutes a judgment of guilt without evidence to sustain it and without notice of the charges to the accused.

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1 For other cases: State v. Stowe , 132 Mo 207, 33 SW 801, holding indictment for selling mortgaged property bad for failure to allege names of mortgagees; Territory v. Carland 6 Mont. 18, 9 Pac 580, holding indictment for conspiring to defraud county must allege means by which conspiracy was to be accomplished; State v. Van Pelt 136 NC 639, 49 SE 180 holding insufficient indictment charging conspiracy to injure one in his business because he was unfair to union labor; Shaw v. United States, 165 F 175, indictment of employee in postal service for embessling letter, failing to allege that letter came into his possession in his offical official character, wa s fatally defective; Martin v. U. S. 168 F 205, indictment of clerk of commissioner of Indian tribe for fraudulently withdrawing Creek roll and making copy of it, without setting forth particularity of acts and intent was insufficient.

PETITIONERS IN CURTIS ET AL, FORD ET AL AND GRAND ET AL WERE DENIED THEIR RIGHT TO A JURY TRIAL AND THEREFORE DENIED DUE PROCESS OF LAW UNDER THE SIXTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION

I

MISSOURI LAW DENIES A JURY TRIAL TO PERSONS ACCUSED OF CRIMINAL CONTEMPT AND THEREFORE PETITIONERS HAVE NOT WAIVED THEIR RIGHT TO ASSERT THEIR CLAIM HERE

Petitioners in Curtis et al, Ford et al and Grand et al were sentenced by the circuit court of St. Louis to long jail terms ranging from 60 days to (1) year and fined $500-$1,000 dollars plus cost of court. These petitioners were tried, convicted and sentenced by Judge Michael J. Scott of the St. Louis Circuit Court without benefit of a jury trial. At the time these cases were pending before the circuit court no request for a jury trial was made by petitioners. Furthermore, it would have been useless for petitioners to request a jury because Missouri law denies this right to a person accused of contempt of court. State v Shepherd 76 SW 79; DeMay v Liberty Foundry Co, 37 SW2d 648 and upon conviction the Judge may sentence the offender to an unlimited jail term or levy an unlimited fine or both in his discretion.[1]

Whether or not petitioners have waived their right to allege lack of due process on the ground of the excessive length of their sentences without benefit of a jury trial, is the first matter for consideration. The United States Supreme Court has settled this point in Green v United States, 78 S Ct at page 645 where the Court explicitly considered petitioners right to a jury trial even though "petitioners themselves have not contended that they were entitled to a jury trial". Also see United States v Barnett, 84 S Ct 984, 1012 footnote No. 7 (dissenting opinion). In view of the severity of the sentences and the fact that the judge who issued the injunction also tried the contempt cases in which petitioners had no statutory or constitutional right to a jury under Missouri law, it would seem that justice would require that this issue be adjudicated here.

II

THE SEVERITY OF SENTENCES THAT WERE IMPOSED OR COULD HAVE BEEN IMPOSED ACCORDING TO MISSOURI LAW REQUIRED THAT PETITIONERS BE GRANTED A JURY TRIAL PURSUANT TO THE SIXTH AND FOURTEENTH AMENDMENTS TO THE FEDERAL CONSTITUTION

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1. Missouri Revised Statutes 1959, Sec 470.120

It has been held by the United States Supreme Court and many state supreme courts, that one charged with criminal contempt has no constitutional right to a jury trial. Green v United States 78 S Ct 632 (5-4 decision); United States v Barnett, 84 S Ct 984 78 S Ct 984 (5-4 decision). However in recent years the punishment meted out for criminal contempt has increased far beyond the trivial sanctions which judges had heretofore imposed. In United States v Barnett supra Justice Goldberg said at page 1018 (dissenting opinion)

> "3. Criminal Contempt in Recent Years.
>
> There has been a dramatic increase in recent years in the severity of the punishment imposed in the federal courts without trial by jury for criminal contempt. For example, in Green v U.S., supra, and Collins v U.S., 269 F2d 745, sentences of imprisonment for three years were imposed; in in Piemonte v U.S., 367 U.S. 556, a sentence of imprisonment for 18 months was imposed; in Brown v U.S., 359 Us 41, a sentence of imprisonment for 15 months was imposed; in N ilva v U.S., 352 US 385, a sentence of imprisonment of one year and a day was imoosed; and in Levine v U.S., 362 US 610, a sentence of imprisonment for one year was imposed."
>
> "4. Historical Conclusions
>
> The available evidence seems to indicate that (a) at the time of the Constitution criminal contempts triable without a jury were generally punishable by trivial penalties and that (b) at the time of the Constitution all types of "petty" offenses punishable by trivial penalties were generally triable without á jury. This history justifies the imposition without trial by jury of no more than trivial penalties for criminal contempts."

The sharp increase in the punishment for criminal contempt also caused the majority of the Supreme Court to take a new look at contempt punishment in Barnett supra where the court ruled 5-4 that Ross Barnett had no constitutional or statutory right to a jury trial. However in denying Barnett's right to a jury the Court majority cautioned that imposition of severe punishment without benefit of a jury would be a violation of defendants rights under the Sixth amendment. In footnote 12 at page 992 Justice Clark speaking for the Court added the following dictum:

> " In view of the impending contempt hearing, effective administration of justice requires that this dictum be added. Some members of the Court are of the view that without regard to the seriousness of the offense, punishment by summary trial, without a jury would be constitutionally limited to that penalty provided for petty offenses."

It is in the light of Barnett that the right of petitioners to a jury trial under the Sixth and Fourteenth amendments to the U.S. Constitution must be viewed. The quantum of punishment either by fine or imprisonment constituting a petty offense has already been settled by the Supreme Court. In District of Columbia v Colts 51 S Ct 52, the Court held that the offense of reckless driving carrying a fine of "not less than $25 nor more than $100 or imprisonment not less than 10 days nor more than 30 days, was a grave offense entitling the defendant to a jury trial. Also see District of Columbia v Clawans, 57 S Ct 660. Furthermore it is clear from current legislation that the United States Congress considers only fines and jail sentences of $300 or less and 45 days or less respectively, as "petty" and not requiring a jury in criminal contempt.[2]

In the instant cases all petitioners were fined $500- or more and received jail terms of 60 days or more. It follows then, that these sentences were not those provided for petty offenses and therefore petitioners were entitled to a jury trial pursuant to the Sixth amendment of the U.S. Constitution which states in part:

> " In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall have been committed."

The Supreme Court has recently made the Sixth amendment rights and standards obligatory on the states and essential to due process of law under the Fourteenth Amendment. Gideon v Wainwright, 83 S Ct 792; Pointer v Texas, 85 S Ct ____(1965); Douglas v Alabama, 85 S Ct ____(1965).

In order to preserve our cherished liberties, the right to a jury trial in all criminal prosecutions must be made inviolate, especially where severe punishment can be administered. If the convictions in the cases at bar are upheld the door will be opened to other serious miscarriages of justice throughout the nation where racial strife and hostilities are more intense than in St. Louis. The struggle of the Negro citizen in America for equal

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2The Civil Rights Act 1957, 42 USCA 1995 provided in part "Provided further, however, that in the event such proceeding for criminal contempt be tried before a judge without jury and the sentence of the court upon conviction is a fine in excess of the sum of $300 or imprisonment in excess of forty-five days, the accused in said proceeding, upon demand therefore shall be entitled to a trial de novo before a jury, which shall conform as near as may be to the practice in other criminal cases."

In addition the Civil Rights Act of 1964 limited the punishment for criminal contempt to $1,000 fine and 6 months in jail and grants the defendant an absolute right to a jury trial no matter what the punishment.

job opportunity is just beginning; as competition for jobs increases the "power structure" in other states both N orth and South will add the injunctive remedy to their arsenal of methods designed to prevent the Negro from attaining his legitimate asperation of economic security and first class citizenship. It is undoubtedly true that a judge can dispose of charges of criminal contempt faster and more cheaply than a jury but only at the cost of abandoning our great constitutional safeguards aimed at protecting basic human rights. For example, in the instant case of Curtis et al 4 of the 9 persons sentenced by Judge Scott were found not to have violated the injunction by the St. Louis Court of Appeals, and though innocent of the charges these persons served 8 days in jail without bail. In a ddition the weight of the evidence pertaining to the other 5 persons indicated that most of them tried to prevent violation of the restraining order rather than subvert it. Petitioners in Ford et al and Grand et al were total strangers to the injunction and were not bound by it. In Ford et al petitioners were granted only a few minutes to prepare their defense before being forced to trial; petitioners in Peake et al were especially "invited" or "selected" by bank officials to enter the premises and once inside they were arrested on trespassing charges and later charged with criminal contempt. All of the petitioners have served 55 days of their sentences without bail; None of them was actually guilty but all were convicted and their constitutional right to a fair trial have been shamelessly violated.

In Green v United States, supra (dissenting opinion) Justice Hugo Black eloquently summarizes the dangers inherent in trials without recourse to the jury. He states at page 651:

> "When the responsibilities of lawmaker, prosecutor, judge, jury and disciplinarian are thrust upon a judge he is obviously incapable of holding the scales of justice perfectly fair and true and reflecting impartially on the guilt or innocence of the accused. He truly becomes the judge of his own cause. The defendant charged with criminal contempt is thus denied what I had always thought to be an indispensable element of due process of law - an objective, scrupulously impartial tribunal to determine whether he is guilty or innocent of the charges filed against him. In the words of this Court: "A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness. To this end no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome.**** Fair trials are too important a part of our free society to let prosecuting judges be trial judges of the charges they prefer."

File

IN THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT
SEPTEMBER TERM 1963

ROBERT B. CURTIS, et al	)	No. 17599
	)	
LOUIS FORD, et al	)	No. 17600
	)	
MICHELA GRAND, et al	)	No. 17601
	)	
APPELLANTS	)	
	)	
vs.	)	
	)	
WILLIAM BOEGER WARDEN OF ST. LOUIS MUNICIPAL JAIL,	)	
	)	
RESPONDENT	)	

APPELLANTS' BRIEF

APPEAL FROM THE
DISTRICT COURT OF THE UNITED
STATES FOR THE EASTERN
DISTRICT OF MISSOURI
EASTERN DIVISION

ROBERT E. WILSON
JOSEPH S. McDUFFIE
R. L. WITHERSPOON
CLYDE S. CAHILL
CHARLES R. OLDHAM
WYVETTER H. YOUNGE
EMANUEL WILLIAMS
MARGARET B. WILSON
ROBERT RATERMANN, all of St. Louis
BILLIE JONES, of East St. Louis, Ill.

Attorneys for Appellants

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PART ONE

STATEMENT OF THE CASE

This is an appeal from the ruling of the United States District Court of Missouri, Eastern Division, " . . . in its discretion" in declining "to exercise its jurisdiction and entertain the petitioners' writ for federal habeas relief, without the opportunity having been first presented to the United States Supreme Court to grant or deny a petition for certiorari."

Appellants' application for habeas corpus raised basic questions of due process, equal protection of the laws and violations of rights secured to them under both the State and Federal Constitutions and further alleged that, "All adequate state remedies available to petitioners have been exhausted by them."

The defense made to the claims was a denial of any violation of basic rights secured by state and federal constitutions; that the federal questions had not been properly preserved; and a general denial of the allegation of exhaustion of state remedies.

The District Court heard argument on the questions of exhaustion of state remedies and its right to exercise its discretion to assume or not to assume jurisdiction. In its opinion the District Court held that the appellants had not exhausted their state remedies for the following reasons:

(1) appellants had not filed motions in the trial court under Missouri Supreme Court Rule 27.26 to permit the trial court to correct its own errors; (2) that under Missouri law habeas is a part of the statutory appellate review structure in criminal contemptand the judgments of contempt had been affirmed; and therefore, appellants should have sought relief via certiorari in the Supreme Court of the United States; (3) the District Court should not act on federal questions in an appellate capacity to the Supreme Court of Missouri.

The causes before this Court arise from separate alleged violations of a restraining order which had issued from Division No. 2 of the Circuit Court of the City of St. Louis, Honorable Michael J. Scott, Judge, presiding. The alleged violations of the restraining order involved different parties, three distinct incidents and three separate trials for contempt in the Circuit Court of Missouri.

After trial in the Circuit Court of Missouri, appellants were ordered to appear before Judge Scott to receive the judgment of the court. Each of the appellants were found guilty of Contempt of Court and Judge Scott punished them "as for criminal contempt" and imposed definite jail terms ranging from sixty days to one year in the City Jail, fines ranging from $500.00 to $1,000.00, and costs.

The post trial procedures for the purposes of the issues presented in this appeal may be considered as identical.

Appellants made applications for bail and stays pending filing of motions for rehearings, new trials or appellate reviews of the trial court's findings and decisions. All motions for bail, stays of execution, rehearings or new trials were denied and appellants were committed to the custody of respondent and began serving their jail terms.

An application for habeas corpus on the question of bail was then filed in the St. Louis Court of Appeals which was denied on the theory that appellants had been convicted of criminal contempt from which no appeal would lie. A second petition for habeas corpus was filed in the same Court to test the legality of appellants' restraint. The writ was issued and appellants were admitted to bail. On January 15, 1964, the Court of Appeals discharged four of the original defendants. However, as to these appellants, the Court of Appeals remanded them to the custody of respondent.

Appellants filed an application for writs of habeas corpus in the Supreme Court of Missouri on January 23, 1964 and requested that they be admitted to bail. The Missouri Supreme Court denied bail and thereafter denied the writs on January 31, because the "petition and exhibits filed, including transcript of evidence submitted by petitioners . . ., fail to show a claim on which relief can be granted for the reasons stated in the opinion of the St. Louis Court of Appeals . . .."

Appellants did not seek certiorari from the Supreme Court of the United States, but on February 7, 1964, filed an application for writs of habeas corpus in the United States District Court for the Eastern District of Missouri, Eastern Division. On February 7, 1964, the Court issued its order to the respondent to show cause, on February 17th, why the writ should not issue. On motion of the respondent, the time was extended to February 20th, at which time respondent filed his return and the Court set a hearing on the merits for February 27th. Appellants filed their answer to respondent's return, on February 25th, and on February 27, 1964, the Court denied the writs of habeas corpus. The next day, February 28th, the Court denied appellants' applications for Certificates of Probable Cause. On that same day, this Court granted appellants' Applications for Certificates of Probable Cause and appellants filed Notices of Appeal in the District Court from the action of said Court in denying appellants' applications for writs of habeas corpus.

Appellants challenge as erroneous the ruling of the District Court that they had failed to exhaust State remedies available to them, and the Court's refusal to hold a hearing on the merits of their applications for federal habeas relief.

PART TWO

POINTS AND AUTHORITIES

THE UNITED STATES DISTRICT COURT ERRED IN ITS SUGGESTION THAT MISSOURI SUPREME COURT RULE 27.26 AFFORDS APPELLANTS A STATE REMEDY NOW AVAILABLE TO THEM.

STATE V. THOMPSON, 324 S.W.2d 133
R.S. Mo., 1959, Sec. 532.040
MISSOURI SUPREME COURT RULE, 27.26

II.

THE UNITED STATES DISTRICT COURT ERRED IN RULING THAT APPELLANTS FIRST SHOULD HAVE SOUGHT CERTIORARI IN THE UNITED STATES SUPREME COURT.

FAY V. NOIA, 372 U.S. 391, 83 S.Ct. 822
DARR V. BURFORD, 339 U.S. 200, 70 S.Ct. 587
EX PARTE HAWK, 321 U.S. 114, 64 S.Ct. 448
BROWN V. ALLEN, 334 U.S. 443, 73 S.Ct. 397

III.

THE UNITED STATES DISTRICT COURT ERRED IN TREATING THE APPELLANTS' HABEAS PROCEEDINGS IN THE COURTS OF MISSOURI AS A PART OF THE STATUTORY APPELLATE REVIEW PROVIDED BY THE STATE OF MISSOURI.

FAY V. BOIA, infra
STATE EX REL CHICAGO V. BLAND et al, 88 S.W. 28, S.Ct. Mo.
EX PARTE CLARK, 106 S.W. 990, S.Ct. Mo.
SISK V. WILKINSON, 265 S.W. 536
25 AM. JUR., HABEAS CORPUS, Sec. 28, pp. 162-164

IV.

THE UNITED STATES DISTRICT COURT ERRED IN CONSTRUING ITS POSITION IN THE "FEDERAL LADDER" AND COMITY BETWEEN STATE AND FEDERAL COURTS AS DENYING TO IT THE DUTY TO HEAR AND DETERMINE APPELLANTS' APPLICATION FOR WRITS OF HABEAS CORPUS.

TOWNSEND V. SAIN, 372 U.S._____, 83 S.Ct. 745
FAY V. NOIA, infra
FLEENOR V. HAMMOND, 6th CCA, 116 F.2d 982
UNITED STATES CONSTITUTION - Articles 3 and 6 and
Fourteenth Amendment

PART THREE

ARGUMENT

I

THE UNITED STATES DISTRICT COURT ERRED IN ITS SUGGESTION THAT MISSOURI SUPREME COURT RULE 27.26 AFFORDS APPELLANTS A STATE REMEDY NOW AVAILABLE TO THEM.

The District Court in its opinion on page 2, and in note 2, page 7, and by its questioning of counsel during oral argument on the questions of the District Court's jurisdiction, suggested that the procedures under Supreme Court Rule 27.26 (which appellants admit were never used by them) may still be open to them as a relief. That rule provides, in part, as follows:

> "A prisoner in custody under sentence and claiming a right to be released on the ground that such sentence was imposed in violation of the Constitution and laws of the State or the United States, or that the court imposing such sentence was without jurisdiction to do so, or that such sentence was in excess of the maximum sentence authorized by law or is otherwise subject to collateral attack, may file a motion at any time in the court which imposed such sentence to vacate, set aside or correct the same. * * * If the court finds that the judgment was rendered without jurisdiction or that the sentence imposed was illegal or otherwise subject to collateral attack, or that there was such a denial or infringement of the constitutional rights of the prisoner as to render the judgment subject to collateral attack, the court shall vacate and set aside the judgment and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate."

This failure to use this Rule does not bar appellants' rights to writs of habeas corpus. The Rule provides for an

alternative method to habeas relief for determining the legality of the detention in the Court imposing the sentence. State v. Thompson, 324 SW 2d 133 (S. Ct. en banc, 1959). However, the procedure under Rule 27.26 is not cumulative and where habeas corpus has been used, the remedy provided for in the Rule is not available. R.S. Mo., 1959, Sec. 532.040.

Here, appellants have used habeas proceedings for post-trial relief, therefore Rule 27.26 is no longer available to them and is not a bar to habeas relief in the United States District Court.

II.

THE UNITED STATES DISTRICT COURT ERRED IN RULING THAT APPELLANTS FIRST SHOULD HAVE SOUGHT CERTIORARI IN THE UNITED STATES SUPREME COURT.

Prior to the Supreme Court's opinion in Fay v. Noia, 372 U.S. 391, 83 S. Ct. 822 (1963) the practice was well settled that in the majority of cases coming to the United States District Courts for habeas relief for persons detained pursuant to a state court judgment of conviction for a criminal offense, certiorari in the United States Supreme Court first must have been denied. This practice evolved from the application of the policy of comity which found its practical expression in the requirement that an applicant for habeas relief in the United States District Courts must first have exhausted his available remedies in the courts of the state of his conviction. Available remedies in the state courts being deemed to include

review in the United States Supreme Court by writ of error. This writ by statute was a writ of right and the practice seems to be well founded.

However, after review of a decision of a state court in the Supreme Court of the United States by writ of error was abolished and certiorari was substituted, review was no longer a matter of right, but was one of discretion. A fiction then developed in the practice and review by certiorari too was treated as exhaustion of state remedies. This practice became fixed in the law and was finally enunciated in Ex Parte Hawk, 321 U.S. 114, 64 S. Ct. 448, Darr v. Burford, 339 U.S. 200, 70 S. Ct. 587, and Brown v. Allen, 344 U.S. 443, 73 S.Ct. 397, as requiring appellate review by means of an application for a writ of certiorari in the Supreme Court of the United States to the State Supreme Court as an exhaustion of state remedies where United States Constitutional questions had been squarely raised before the state supreme court. If certiorari was denied, then the applicant could apply for habeas relief in the Federal District Court. The exception to this "dual journey" was for the applicant to plead and show exceptional circumstances.

Fay v. Noia, supra, changed this circuitous route and made a direct approach to the United States District Court for habeas relief, directly from the state supreme court possible after the exhaustion of all available state remedies.

Briefly stated, the facts in the Noia case were these: Noia had been convicted for murder on a coerced confession and received a sentence of life imprisonment. He did not appeal. Some _____ years later, Noia sought his release by coram nobis in the state court. Relief was denied on the ground of his default in procedure due to his failure to timely appeal his conviction. Certiorari to the United States Supreme Court was denied and Noia sought redress through the federal system in the United States District Court. The writ was denied because of the default in state procedures and an appeal was prosecuted to the United States Court of Appeals for the Second Circuit. The Court of Appeals ruled favorably for Noia because of the unusual circumstances, inter alia; and on application of respondent, the United States Supreme Court granted certiorari and upheld the judgment of the United States Court of Appeals, but not for the same reasons, i.e. unusual circumstances. Fay v. Noia, supra, l.c. 827. The Court of Appeals opinion was based on Darr v. Burford, supra.

In the Noia case, the Supreme Court made several "holdings" which are determinative of the questions raised here. The Court, at page 827 stated:

> "Federal courts have power under the federal habeas statute to grant relief despite the applicant's failure to have pursued a state remedy not available to him at the time he applies; the doctrine under which state procedural defaults are held to constitute an adequate and independent state law ground barring direct Supreme Court review is not to be extended to limit the power granted the federal courts under the federal habeas statute. Noia's failure to appeal was not a failure to exhaust 'the remedies available in

the courts of the State" required by Sec. 2254;"

at page 846

". . . we reject as unsound in principle, as well as not supported in authority, the suggestion that the federal courts are without power to grant habeas relief to an applicant whose federal claims would not be heard on direct review in this Court because of a procedural default furnishing an adequate and independent ground of state decision."

at page 847

". . . We hold that Sec. 2254 is limited in its application to failure to exhaust state remedies still open to the habeas applicant at the time he files his application in federal court."

"Noia timely sought and was denied certiorari here from the adverse decision of the New York Court of Appeals on his coram nobis application, and therefore the case does not necessarily draw in question the continued vitality of the holding in Darr v. Burford, supra, that a state prisoner must ordinarily seek certiorari in this Court as a precondition of applying for federal habeas corpus. But what we hold today necessarily overrules Darr v. Burford to the extent it may be thought to have barred a state prisoner from federal habeas relief if he had failed timely to seek certiorari in this Court from an adverse state decision. Furthermore, our decision today affects all procedural hurdles to the achievement of swift and imperative justice on habeas corpus, and because the hurdle erected by Darr v. Burford is unjustifiable under the principles we have expressed, even insofar as it may be deemed merely an aspect of the statutory requirement of present exhaustion, that decision in that respect also is hereby overruled."

". . . Nevertheless, the Court in Darr v. Burford put a gloss upon these words to include petitioning for certiorari in this Court, which is not the court of any State, among the remedies that an applicant must exhaust before proceeding in federal habeas corpus. It is true that before the enactment of Sec. 2254 the Court had spoken of the obligation to seek review in this Court before applying for habeas. * * * But that

> was at the time when review of state criminal judgments in this Court was by writ of error. Review here was thus a stage of the normal appellate process. The writ of certiorari which today provides the usual mode of invoking this Court's appellate jurisdiction of state criminal judgments, "is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor." Supreme Court Rule 19(1). Review on certiorari therefore does not provide a normal appellate channel in any sense comparable to the writ of error.

at page 848

> The rationale of Darr v. Burford emphasized the values of comity between the state and federal courts, and assumed that these values would be realized by requiring a state criminal defendant to afford this Court an opportunity to pass upon state action before he might seek relief in federal habeas corpus. But the expectation has not been realized in experience.
>
> Although we hold that the jurisdiction of the federal courts on habeas corpus is not affected by procedural defaults incurred by the applicant during the state court proceedings, we recognize a limited discretion in the federal judge to deny relief to an applicant under certain circumstances.

and further at page 849

> . . . We therefore hold that the federal habeas judge may in his discretion deny relief to an applicant who has deliberately bypassed the orderly procedure of the state courts and in so doing has forfieted his state court remedies.

These express "holdings" in the Noia case can be summarized in light of the Burford case with which Noia was primarily concerned, as follows:--

First. Certiorari in the United States Supreme Court is not a prerequisite to resort to the United States District Court in a habeas proceeding to review the judgment of the supreme court of the state.

Second. 28 USCA 2254 does not make certiorari (a writ of grace) a necessary component of exhaustion of state remedies as it is not a remedy "available in the courts of the state".

Third. All procedural hurdles erected by Darr v. Burford which prevented swift and imperative justice on habeas corpus are expressly overruled.

Fourth. Section 2254 is limited in its application to state remedies available to the habeas applicant at the time he files his application in the federal court.

Fifth. Habeas applicants who deliberately bypass the orderly procedures of the state courts and in so doing forfeit state court remedies may be denied federal habeas relief.

Appellants submit that they have timely applied for all adequate relief in the courts of the State of Missouri by applications for writs of habeas corpus; that substantial Federal Constitutional questions were there presented for decision by the state courts; and further that the requirements of comity and the exhaustion of state remedies as espoused by the Burford case are no longer binding upon the United States District Court as determinative of its jurisdiction in a habeas proceeding.

III.

THE UNITED STATES DISTRICT COURT ERRED IN TREATING APPELLANTS' HABEAS PROCEEDING IN THE COURTS OF MISSOURI AS A PART OF STATUTORY APPELLATE REVIEW PROVIDED BY THE STATE OF MISSOURI.

The District Court erred in treating appellants' habeas proceedings in the St. Louis Court of Appeals and their application for writs of habeas corpus in the Supreme Court of Missouri, which were denied, as being in the nature of appeal procedures. It is a well established decisional, as well as encyclopedic, rule that the writ of habeas corpus does not have the force and effect of such a proceeding as an appeal, error proceeding or writ of certiorari. It is essentially a writ of inquiry and is granted to test the right under which a person is detained. The purpose of the writ is not to determine the guilt or innocence of a prisoner but only to ascertain whether he is restrained of his liberty by due process of law.

Under Missouri law there is no appeal in cases of criminal contempt. Ex Parte Clark,-Mo., 106 SW 990; State ex rel Chicao vs. Bland, et al., 88 SW 28 (Sup. Ct. Mo. 1905). In such contempts, however, the court to which an application for a writ of habeas corpus is made may go behind the recitals of the judgment and determine for itself the accuracy of those recitals and their sufficiency to support the judgment. The right to go behind the recitals in the findings and commitment orders is not the same as the rights afforded in the normal appeal procedure. On an appeal, the appellate court, particularly in equity has great powers. The case may be retried de novo on the record giving due consideration to the fact that

the trial court had an opportunity to view the witnesses, and the appellate courtthen can enter a judgment in accordance with the evidence, remand the case for new trial, modify the judgment or reverse the decision of the lower court. No such power exists in habeas proceedings in Missouri. Here the court has the power to either remand the petitioners to custody or discharge them. The right to review the sufficiency of the evidence to support a conviction can not be equated with a statutory right of appeal. This distinction is recognized in Missouri, Sisk v. Wilkinson, 265 S.W. 536. The writ of habeas corpus was neither intended to have, nor does it have, the primary function of a proceeding for the review of errors committed by a trial court within its jurisdiction, andconsequently, does not have the force and effectof such a proceeding as an appeal, error proceeding, or writ of certiorari. 25 Am. Jur., Habeas Corpus, Sec. 28, pp. 162-164. ". . . the traditional characterization of the writ of habeas corpus as an original civil remedy for the enforcement of the right to personal liberty, rather than as a stage of the state criminal proceeding, or as an appeal therefrom, emphasizes the independence of the federal habeas proceedings . . . ." Fay v. Noia, 372 U.S. 391, 83 S. Ct. 822.

IV.

THE UNITED STATES DISTRICT COURT ERRED IN CONSTRUING ITS POSITION IN THE "FEDERAL LADDER" AND COMITY BETWEEN STATE AND FEDERAL COURTS AS DENYING TO IT THE DUTY TO HEAR AND DETERMINE APPELLANTS' APPLICATION FOR WRITS OF HABEAS CORPUS.

The doctrine of comity between state and federal courts is a necessary development of restraint for the preservation of procedural harmony in the orderly administration of criminal justice as between sovereign powers. However, the doctrine can not be extended to limit the power of federal courts under the federal habeas statute. It is but the postponement of federal jurisdiction and not a denial of it. And federal jurisdiction is not limited or circumscribed by a state court decision. Fleenor v. Hammond, 6th CCA, 116 F.2d 982.

The doctrine of comity is but a doctrine of abstension without prejudice to federal rights whereby one court defers action on causes properly within its jurisdiction until the courts of another sovereignity with concurrent powers, and already cognizant of the litigation, have had an opportunity to pass upon the matter.

In the instant case, theappellants chose the alternative review procedure of habeas corpus to writs of certiorari in the St. Louis Court of Appeals, in seeking a review of their unconstitutional restraint;and thereafter upon a denial of relief,

pursued similar proceedings in the Supreme Court of Missouri, which court denied their writs of habeas corpus, thus exhausting all state remedies available to appellants.

The Supreme Court of the United States commented on the question of comity in the case of Fay v. Noia, supra, at page 848 the court said:

> "The rationale of Darr v. Burford emphasized the values of comity between the state and federal courts, and assumed that these values would be realized by requiring a state criminal defendant to afford this Court an opportunity to pass upon state action before he might seek relief in federal habeas corpus. But the expectation has not been realized in experience. On the contrary the requirements of Darr v. Burford hasproved only to be an unnecessarily burdensome step in the orderly processing of the federal claims of those convicted of state crimes.

The Supreme Court then pointed out that it would be much better to have a complete record made in the DistrictCourt which has facilities for taking evidence and preparing a record and added this comment in the Noia case;

> ". . . Our function of making the ultimate accommodadation between state criminal law enforcement and state prisoners' constitutional rights becomes more meaningful when grounded in the full and complete record which the lower federal courts on habeas corpus are in a position to provide."

The doctrine of comity is based on the erroneous premise of equal sovereign powers, state and federal governments. The doctrine of comity cannot limit the power and duty of the district courts under the federal habeas statutes, Articles 3

and 6 and Amendment 14 of the United States Constitution. Substantial constitutional questions have been raised by appellants by their pleadings and it was the duty of the district court to issue its writ of habeas corpus and grant the appellants a hearing. Townsend v. Sain, 372 U.S. _____, 83, S.Ct. 745.

CONCLUSION

The District Court, in this instance, is not vested with the power to deny a hearing to these appellants and erred in denying the writ of habeas corpus.

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P - 1 Letter of August 14, 1963. Robert Curtis to Jefferson Bank and Trust Co.

P - 2 Letter of August 27, 1963. Wayne Millsap to Robert Curtis.

P - 3 Petition for Injunction and Restraining Order

P - 4 Restraining Order

P - 5 Indemnity Bond

P - 6 Motion for Issuance of Attachment Pursuant to Rule 92.15

P - 7 Attachment

P - 8a Findings of Fact & Judgment, Michela Grand
b Danny Pollack
c James Peake, Jr.

P - 9a Commitment Order, Michela Grand
b Danny Pollack
c James Peake, Jr.

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ROBERT B. CURTIS

1204 FRANKLIN AVENUE
ST. LOUIS 6, MISSOURI
TELEPHONE CHESTNUT 1-6838

August 14, 1963

Mr. Harold Booker
Assistant Auditor
Jefferson Bank & Trust Company
Jefferson and Washington Blvd.
Saint Louis, Missouri

Dear Mr. Booker:

As a result of our conversation last week and the report given by Rev. Charles Perkins and me, the Saint Louis Committee of Racial Equality voted to take direct action against Jefferson Bank if four full time Negroes are not hired in clerical or teller positions within two weeks.

We feel that this action would be justified because of the discriminatory hiring policy practiced by Jefferson Bank over the years. This situation has been further aggravated by the usage of your faculties by a large number of Negroes.

Sould you decide to comply with the above mentioned request, CORE would appreciate receiving a report on the progress you have made in hiring Negroes on a quarterly basis.

Sincerely yours,

Robert B Curtis

Robert B. Curtis
Chairman of CORE

RBC/jt

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63101

August 27, 1963.

Mr. Robert B. Curtis
Chairman of CORE
1204 Franklin Avenue
St. Louis 6, Missouri 63106

Re: Jefferson Bank and Trust Company

Dear Mr. Curtis:

This will acknowledge receipt of your letter of August 14, 1963 directed to the Jefferson Bank and Trust Company. Your letter has been referred to my attention.

The request of your organization that the Jefferson Bank and Trust Company employ four Negroes in clerical or teller positions by August 28, 1963 cannot be honored for the following reasons:

(1) The requirements of the bank are not such, at the present time, that four additional employees are needed to perform the work of the bank.

(2) The bank does not have applications for employment from four Negroes who are qualified to perform bank employment.

(3) The bank is unwilling to hire employees which are not needed at the bank or to discharge present competent employees for the purpose of employing four Negroes in clerical or teller positions.

(4) The demands of your organization are in violation of the Fair Employment Practices Act which has been adopted by the City of St. Louis and the State of Missouri in that you are asking the bank to discriminate in its employment practices in favor of Negroes.

(5) The unwarranted charge by your organization that the Jefferson Bank and Trust Company has been discriminating in its employment practices, when in fact this bank has always given full consideration to the employment of qualified Negroes.

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(6) The St. Louis Commission on Equal Opportunities has been recently established and should be given an opportunity to deal with the problem of job opportunities for Negroes. The bank and all reasonable employers in St. Louis will be strongly influenced by the recommendations of the Commission.

The bank has now been informed, through the local press, that your organization intends to take "direct action" against the Jefferson Bank from 4:00 to 6:00 p.m. on Friday, August 30th. This "direct action" has been described by you to include sit-ins, stand-ins and lie-ins which may interfere with the conduct of the business of the bank during critical hours of its operation.

The Jefferson Bank and Trust Company cannot accept the demands you have put upon it and cannot approve the action you suggest taking against it on Friday, August 30th. I therefore urge you, in the interest of the entire Negro community, to reconsider the position your organization has taken concerning the Jefferson Bank and Trust Company and cancel the demonstration you have planned at the bank on Friday, August 30th. The demonstration you propose may impede the progress which is being made toward obtaining equal job opportunities for Negroes in the St. Louis area.

Yours very truly,

Wayne L. Millsap
Attorney for Jefferson Bank
and Trust Company

WLM:bse

cc: CORE, 3501 Easton Avenue
Mrs. Charles Oldham, 5227 Westminster Place
Mr. J. H. McConnell, Jefferson Bank

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS, STATE OF MISSOURI

JEFFERSON BANK AND TRUST COMPANY,
a corporation,

Plaintiff

vs.

ROBERT B. CURTIS
4421 McPherson
St. Louis, Missouri

WILLIAM L. CLAY
5474 Clemens Avenue
St. Louis, Missouri

CHARLES R. OLDHAM and MARIAN OLDHAM
5227 Westminster
St. Louis, Missouri

LUCIEN RICHARDS
c/o Committee of Racial Equality
3501 Easton Avenue
St. Louis, Missouri

CLYDE S. CAHILL, JR., RICHARD DALY,
WALTER HAYS, REV. CHARLES PERKINS,
NORMAN SEAY, HERMAN THOMPSON, MELVIN
WEST

Individually and as representatives of a
class known as St. Louis Committee of
Racial Equality,

Defendants

Cause No.

Div. No.

PETITION FOR INJUNCTION

Comes now plaintiff and for its cause of action states:

(1) That plaintiff now is and at all times hereinafter mentioned was a corporation duly organized and existing under the laws of the State of Missouri and is engaged in the banking business in the City of St. Louis, State of Missouri.

(2) That plaintiff's place of business is at 2600 Washington Avenue in the City of St. Louis on the northeast corner of a lot which is located on the southwest corner of the intersection of Washington and Jefferson Avenue, a busy and well traveled intersection in the City of St. Louis, where it operates a bank with a drive-in facility located on

the parking lot of the bank.

(3) That the defendants Robert B. Curtis, Lucien Richards, William L. Clay, Charles R. Oldham, Marian Oldham, Clyde S. Cahill, Jr., Richard Daly, Walter Hays, Rev. Charles Perkins, Norman Seay, Herman Thompson and Melvin West are officers, members or representatives of the St. Louis Committee of Racial Equality, a voluntary unincorporated association which has aided, abetted and assisted with respect to the acts and conduct herein mentioned and maintains an office at 3501 Easton Avenue in the City of St. Louis, Missouri, and that as Chairman and official of the St. Louis Committee of Racial Equality defendants Curtis and Richards have from time to time acted in a representative capacity for all the members of said association with apparent authority to represent and bind the members thereof.

(4) That the membership of the Committee of Racial Equality and the number of other persons who have organized and banded together with the above named individual defendants for the above stated purposes are so numerous that it is impractical to make them all parties to this action and the individual defendants above mentioned are therefore made parties individually and as representing all others similarly situated and said defendants have been fairly chosen and do fairly and adequately represent all members of said class. Common questions of law or fact exist with reference to the defendants and the class represented by them, with questions arise out of the protection of the rights of the plaintiff concerning which relief is herein sought.

(5) That on August 14, 1963, defendants made arbitrary and summary demands upon plaintiff that plaintiff engage and employ four (4) members of the Negro race in clerical and teller positions, which plaintiff refused. Plaintiff states that it does not discriminate in the hiring of its employees because of race, color or creed, but states and therefore alleges that it is essential and imperative to the conduct of its business that plaintiff be free in the selection and control of its employees

without the interference of said defendants or others.

(6) That the defendants acting in concert with each other and with other persons in conjunction with agents and representatives of the aforesaid association have publicly announced that beginning on the 30th day of August, 1963 at four o'clock p.m. they will engage in walk-ins, sit-ins and lie-ins which will also include the following acts and conduct for the purpose of forcing plaintiff to accept and accede to defendants' demands that plaintiff employ four (4) members of the Negro race as aforesaid:

(a) That said defendants and other acting in concert and in conjunction with them, as above alleged, will picket the entrance-ways to plaintiff's banking premises, carrying large placards, will physically hinder, obstruct, interfere with, delay, molest and harrass persons desiring to enter plaintiff's banking premises and will attract large and disorderly crowds, thereby preventing the proper conduct and operation of plaintiff's business.

(b) That said defendants and other acting in concert with and in conjunction with them, as above alleged, will without plaintiff's permission, congregate in large numbers inside plaintiff's banking premises and will loudly pray, sing religious hums and communicate to other members of the public, particularly customers of plaintiff, that plaintiff is discriminating in the hiring of members of the Negro race, thereby hindering, interfering with, intimidating, harassing and annoying plaintiff's employees and other persons desiring to do business with plaintiff, making it impossible for plaintiff to properly conduct its banking affairs.

(c) That said defendants and others acting in concert with and in conjunction with them, as above alleged, will form lines in front of tellers' windows and will physically hinder, obstruct,

interfere with, delay and harass customers of plaintiff and other members of the public in approaching said tellers' windoes to transact their business and will also thereby prevent plaintiff from conducting its banking business in a normal and customary manner.

(7) That the relation of employer and employee does not exist beteen plaintiff and defendants and other similarly situated; that defendants and other similarly situated are not engaged in any business competitive with the business of the plaintiff; and that no questions with respect to the hours or wages paid plaintiff's employees, or the right of plaintiff's employees to organize is involved in the demands made by defendants upon the plaintiff which they seek to enforce by the foregoing unlawful acts and conduct.

(8) That defendants and others acting in concert with and in conjunction with them, threaten to and unless restrained by the order of this Court, will continue to so picket; and will continue such wrongful and unlawful trespass in and upon plaintiff's banking premises by congregating therein as aforesaid; and will continue such wrongful and unlawful interference with plaintiff's business by obstructing the access to tellers' windows and engaging in other wrongful and unlawful conduct as aforesaid; and will continue to physically hinder, interfere with, dely, annoy, harass and intimidate plaintiff's employees and other persons, particularly plaintiff's customers. Plaintiff further states that by reason of the foregoing, plaintiff will be thereby irreparably damaged and prevented from conducting and operating its banking business.

(9) That said wrongful and unlawful acts and the consequences and the damages arising therefrom, if permitted to continue, will result in irreparable loss and damage to plaintiff for which plaintiff has no adequate remedy at law, Suits at law, if brought would be numerous, ineffective and due to the delay and lack of financial responsibility of the defendants, individually and collectively, would not give plaintiff any substantial relief and any remedy at law would be wholly inadequate.

(10) That the aforesaid wrongful and unlawful acts and conduct of the defendants and other persons acting in concert and in conjunction with them is designed to threaten, intimidate, coerce and force plaintiff to accede to defendants' demands that plaintiff employ four (4) members of the Negro race in clerical and teller positions in its banking establishment.

(11) By virtue of the aforesaid threatened acts of defendants, an emergency situation has been thereby created and will continue to exist in that such unlawful acts of defendants, acting as individuals and in concert, materially affect, hamper and interfere with the essential security of the plaintiff's banking premises and thereby jeopardize the security of plaintiff's business and premises where plaintiff is the custodian of large sums of money for its customers and for its own account, and by such acts of defendants and a continuation thereof, the security of such large sums of money in the custodyof plaintiff is in great jeopardy by being exposed to and subject to holdup, loss, theft or robbery unless the acts of the defendants be enjoined.

(12) The demands of the defendants are in violation of the Ordinances of the City of St. Louis and the Statutes of the State of Missouri and more particularly, City Ordinance #51512 commonly referred to as the "Fair Employment Practices Act" and Chapter 296, V.A.M.S. commonly referred to as the "Fair Employment Practices Act" in that plaintiff is being requested to discriminate in its employment practices in favor of Negroes.

(13) By virtue of the aforementioned threatened acts of defendants, plaintiff will suffer great, irreparable injury for which it cannot receive adequate recompense in a court of law in that:

(a) Money damages will not be of sufficient reparation for plaintiff's injuries.

(b) The amount of future damage caused will be speculative and not capable of accurate computation in monetary terms.

(c) The state of solvency of defendants will not assure

that they, or any of them, will be capable of fully responding in money damages for injuries caused to plaintiff.

(d) If plaintiff attempted to recover money damages for its injuries it would require to institute a multiplicity of suits in order to attempt an adequate recoverey.

WHEREFORE, plaintiff prays as follows:

(1) That this Court issue its restraining order, restraining and enjoining the defendants and each of them and all persons acting by, through or under them, and every other person or persons acting under the direction or instruction or in concert with them from:

(a) Physically hindering, obstructing, interfering with, delaying, molesting or harassing other persons desiring to enter plaintiff's banking premises, from entering said premises for the purpose of conducting their business with plaintiff or for any other purpose.

(b) Congregating or loitering individually or in groups inside plaintiff's banking premises and therein engaging in any acts or conduct of whatsoever character which interfer with, intimidates, harasses, hinders and annoys plaintiff's employees in the performance of their duties or other persons in the conduct of their business with plaintiff or which in any way interferes with the proper and normal conduct of plaintiff's banking business.

(c) Physically hindering, obstructing, interfering with, intimidating or in any other manner preventing customers of plaintiff and other members of the public from having the usual and customary access to tellers' windows located in plaintiff's banking premises or access to any other department or portion of said banking premises wherein plaintiff conducts its banking business.

(2) That with or without issuing its restraining order as prayed above and with or without an order to show cause, this Court issue its temporary injunction restraining and enjoining the defendants and all other persons mentioned in paragraph 1 above of this prayer from doing any of the things mentioned above in said paragraph 1 of this prayer.

(3) That upon final hearing of this cause this Court permanently restrain and enjoin defendants and all other persons mentioned above in paragraph 1 of this prayer from doing any of the actions or things mentioned therein.

(4) Plaintiff prays for such other and further relief as in the circumstances may be just and proper.

JEFFERSON BANK AND TRUST COMPANY

By /s/ Joseph H. McConnell
Executive Vice-President

GOODBAR, FERRISS, CASSERLY & MILLSAP
Attornyes for Plaintiff
509 Olive Street
St. Louis 1, Missouri
MAin 1-5204

STATE OF MISSOURI)
) SS
CITY OF ST. LOUIS)

JOSEPH H. McCONNELL, being duly sworn on his oath, did say he is the Executive Vice-President of the Jefferson Bank and Trust Company, a corporation of the State of Missouri, and that the matters and things stated in the petition above are true except as to those matters stated on information and belief and those he believes to be true.

Sworn to before me this 29th day of August, 1963.

/s/ Jerome Hershhowiz
Notary Public

My commission expiers: June 18, 1964

AUG 30 1963

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS,

STATE OF MISSOURI.

JEFFERSON BANK AND TRUST COMPANY, a corporation, Plaintiff,	)	
v.	)	Cause No. 57945
ROBERT B. CURTIS ET AL	)	Div. No. 2.

Temporary restraining order ordered to issue as to all defendants individually and as representatives of a class known as St. Louis Committee of Racial Equality from:

(a) Physically hindering, obstructing, interfering with, delaying, molesting or harassing other persons desiring to enter plaintiff's banking premises, from entering said premises for the purpose of conducting their business with plaintiff or for any other purpose.

(b) Congregating or loitering individually or in groups inside plaintiff's banking premises and therein engage in any acts or conduct of whatsoever character which interferes with, intimidates, harasses, hinders and annoys plaintiff's employees in the performance of their duties or other persons in the conduct of their business with plaintiff or which in any way interferes with the proper and normal conduct of plaintiff's banking business.

(c) Physically hindering, obstructing, interfering with, intimidating or in any other manner preventing customers or plaintiff and other members of the public from having the usual and customary access to tellers' windows located in plaintiff's banking premises or access to any other department or portion of said banking

P-4

premises wherein plaintiff conducts its banking business.

IT IS FURTHER ORDERED that, until the hearing of said motion and order therein, the defendants do absolutely desist and refrain from:

(a) Physically hindering, obstructing, interfering with, delaying molesting or harassing other persons desiring to enter plaintiff's banking premises, from entering said premises for the purpose of ~~obstructing~~ CONDUCTING their business with plaintiff or for any other purpose.

(b) Congregating or loitering individually or in groups inside plaintiff's banking premises and therein engage in any acts or conduct of whatsoever character which interferes with, intimidates, harasses, hinders and annoys plaintiff's employees in the performance of their duties or other persons in the conduct of their business with plaintiff or which in any way interferes with the proper and normal conduct of plaintiff's banking business.

(c) Physically hindering, obstructing interfering with, intimidating or in any other manner preventing customers of plaintiff and other members of the public from having the usual and customary access to tellers' windows located in plaintiff's banking premises or access to any other department or portion of said banking premises wherein plaintiff conducts its banking business.

IT IS FURTHER ORDERED THAT PLAINTIFF post bond in the sum of Ten Thousand Dollars ($10,000).

Defendants ordered to show cause in Division 2
of the Circuit Court of the City of St. Louis, Missouri,
on Thursday, September 26, 1963, at ten o'clock a. m. why
a temporary injunction should not be granted as prayed.

Sheriff's Return

Michael J Scott

AUG 30 1963 1:35 P.M.

Executed this writ on the 30th day of August 1963 in the City St Louis Mo by delivering a copy of same as furnished by the clerk to the within named defendants, Robert Curtis, William L. Clay, Marion Oldham, Lucian Richards, Rev. Charles Perkins, Norman Lay, Herman Thompson, Individually and as representatives of a class known as St Louis Committee of Racial Equality.

All done in the City of St Louis Mo.

Martin L. Tozer, Sheriff City of St Louis Mo
William Byrne
Clarence Dentz
William Nowak Deputy Sheriffs

After due and diligent search within the City of St Louis Mo the following defendants could not be found therein. Melvin West, Richard Daly, and Wallace Hayes.

Martin L. Tozer, Sheriff City of St Louis Mo
William Byrne, Deputy

Sheriff's Return Executed this writ on Aug 30, 1963 in the City of St Louis Mo by delivering to eleven defendants, personally, located in the vicinity of Jefferson Bank & Trust Company at Jefferson and Washington St Louis Mo, a copy of this writ as furnished by the Clerk.

Martin L. Tozer. Sheriff City of St Louis
William Byrne
Clarence Dentz
William Nowak Deputy Sheriffs

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS, STATE OF MISSOURI

PHOTOGRAPHED
6-A-6584
Record

JEFFERSON BANK AND TRUST COMPANY,
a corporation,

Plaintiff

vs.

ROBERT B. CURTIS, et al, etc.,

Defendants

Cause No. 57915

Div. No. 2

#57915

INJUNCTION BOND

Know all men by these presents that we, Jefferson Bank and Trust Company, as principal, and Hanover Insurance Company, as surety, are held and firmly bound unto Robert B. Curtis, William L. Clay, Charles R. Oldham, Marian Oldham, Lucien Richards, Clyde S. Cahill, Jr., Richard Daly, Walter Hays, Rev. Charles Perkins, Norman Seay, Herman Thompson and Melvin West in the sum of Ten Thousand & 00/100 Dollars, lawful money of the United States, to the payment of which, well and truly to be made, we bind ourselves, our heirs, legal representatives, and assigns, firmly by these presents.

The condition of the above obligation is such that, whereas, upon the application of Jefferson Bank and Trust Company, the Circuit Court of the City of St. Louis has granted a temporary injunction against said Robert B. Curtis, William L. Clay, Charles R. Oldham, Marian Oldham, Lucien Richards, [redacted], Jr., Richard Daly, Walter Hays, Rev. Charles Perkins, Norman Seay, Herman Thompson and Melvin West, as by the record of said Court will fully appear;

NOW, THEREFORE, if the said Jefferson Bank and Trust Company shall abide the decision which shall be made in the cause wherein said injunction was granted, and pay all sums of money, damages and costs that shall be adjudged against them if the said injunction shall be dissolved, on this obligation shall be void, otherwise to remain in full force.

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WITNESS our hands this 9th day of August, 1963.

JEFFERSON BANK AND TRUST COMPANY

By _____
Asst. Vice Pres.

HANOVER INSURANCE COMPANY

By J. D. Hewlett

PHOTOGRAPHED
1-9-63-87
Record

Approved in open court this _____ day of _____, 1963.

_____
Judge, Circuit Court,
City of St. Louis

New York, New York

POWER OF ATTORNEY

CERTIFIED COPY

KNOW ALL MEN BY THESE PRESENTS: That THE HANOVER INSURANCE COMPANY, a corporation organized and existing under the laws of the State of New York, does hereby constitute and appoint

- J. D. HAMLET -

of St. Louis, Missouri its true and lawful Attorney(s)-in-fact to sign, execute, seal, acknowledge and deliver for, and on its behalf, and as its act and deed, at any place within the United States, or, if the following line be filled in, only within the area therein designated

any and all bonds, recognizances, undertakings, contracts of indemnity or other writings obligatory in the nature thereof, as follows:

Any such obligations in the United States, in any amount.

And said Company hereby ratifies and confirms all and whatsoever said Attorney(s)-in-fact may lawfully do in the premises by virtue of these presents.

This appointment is made under and by authority of the following Resolution passed by the Board of Directors of said Company at a meeting held at the principal office of said Company, a quorum being present and voting, on the Eighth day of June, 1935, which resolution is still in effect:

"Resolved, that the President or any Vice President, in conjunction with the Secretary or any Assistant Secretary, be and they are hereby authorized and empowered to appoint Attorneys-in-fact of the Company, in its name and as its acts, to execute and acknowledge for and on its behalf as Surety any and all bonds, recognizances, contracts of indemnity and all other writings obligatory in the nature thereof, with power to attach thereto the seal of the Company. Any such writings so executed by such Attorneys-in-fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected Officers of the Company in their own proper persons."

IN WITNESS WHEREOF, THE HANOVER INSURANCE COMPANY has caused these presents to be sealed with its corporate seal, duly attested by its Vice President and its Secretary, this twenty-seventh day of September 19 62.

THE HANOVER INSURANCE COMPANY

Paul I. Mann

Senior Vice President

Wayne L. Bess

Secretary

(SEAL)

PHOTOGRAPHED 6-2-65 R...rd

STATE OF ILLINOIS }
COUNTY OF COOK } ss.

On this 27th day of September 1963, before me came the above named Vice President and Secretary of The Hanover Insurance Company, to me personally known to be the individuals and officers described herein, and acknowledged that the seal affixed to the preceding instrument is the corporate seal of The Hanover Insurance Company and that the corporate seal and their signatures as officers were duly affixed and subscribed to said instrument by the authority and direction of said Corporation.

(SEAL)

Jean Hart

Notary Public

My Commission Expires December 5, 1965

I, the undersigned Assistant Secretary of The Hanover Insurance Company, hereby certify that the above and foregoing is a full, true and correct copy of the Original Power of Attorney issued by said Company, and do hereby further certify that the said Power of Attorney is still in force and effect.

GIVEN under my hand and the seal of said Company, at Chicago, Illinois, this 27th day of August 1967.

9/30/63 Approved Marshall J. Dee

STATE OF MISSOURI.
CITY OF ST. LOUIS

On this 29th day of August A.D., 1963, before me appeared J. D. Hamlet to me personally known, who being by me duly sworn, did say that he is the Attorney-in-Fact of THE HANOVER INSURANCE COMPANY, a corporation organized and existing under the laws of the State of New York and that the seal affixed to the foregoing instrument is the seal of the said corporation, and that the said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and the said J. D. Hamlet acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the City of St. Louis, Missouri, the day and year last above written.

This Act performed in the City of St. Louis, Mo. which adjoins the County of St. Louis, Mo., for which I am commissioned.

Richard M. Bailey
Notary Public

My Commission Expires June 17, 1966

PHOTOGRAPHED
Record 1-67-65-84

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS, STATE OF MISSOURI

JEFFERSON BANK AND TRUST COMPANY, a corporation, Plaintiff	)	
vs.	)	Cause No. 57945-E
ROBERT B. CURTIS, et al, Defendants	)	Division No. 2

MOTION FOR ISSUANCE OF ATTACHMENT FOR CONTEMPT PURSUANT TO RULE 92.15 AND SECTION 526.220 REVISED STATUTES OF MISSOURI 1959

Plaintiff moves the Court for the issuance of an attachment of the bodies of Mickey Grand, James Peake, Jadie Walters, Danny Pollock, Naomi Robinson, and other person or persons unknown, for violation of the Temporary Restraining Order issued by this Court on August 30, 1963 (which is now in full force and effect), in the following respects:

(1) Physically hindering and preventing customers of plaintiff and other members of the public from entering and leaving plaintiff's place of business by locking arms in front of entrances.

(2) By entering said banking premises and sitting in, lying in, standing in, milling about, and singing and chanting therein, and thereby interfering with the proper and normal conduct of plaintiff's banking business.

(3) Standing and loitering in front of tellers' windows so as to

9:30 A.M. 10/7/63 Amended Motion Filed

prevent customers of plaintiff's bank from utilizing the facilities for the conduct of their proper and normal business with the plaintiff.

(4) Harrassing plaintiff and hindering and interfering with the proper and normal conduct of plaintiff's business by entering said bank for the purpose of making change which purpose was solely to harrass plaintiff and interfere with the normal conduct of its business.

(5) Harrassing plaintiff and hindering and interfering with the proper and normal conduct of plaintiff's business by entering said bank for the purpose of becoming customers of the bank which purpose was solely to harrass plaintiff and interfere with the normal conduct of its business.

(6) Refusing to leave plaintiff's banking premises after having been requested to do so, and by so refusing to harrass plaintiff and interfere with the normal conduct of plaintiff's business.

WHEREFORE, plaintiff prays this Court to issue its order attaching Mickey Grand, James Peake, Jadie Walters, Danny Pollock, Naomi Robinson and such other person or persons unknown who may be in violation of the Restraining Order of this Court and that they be brought before this Court forthwith and unless they shall disprove or purge the contempt commit them to jail or take bail for their appearance in said Court at the next term thereof to answer for the contempt and abide the Order of the Court and in the meantime to observe and obey the injunction.

Earl J. Neidenbach

Attorney for Plaintiff
509 Olive Street
St. Louis 1, Missouri
MAin 1-5204

1-Ex. 18/7/63
Michael Roach
Judge

STATE OF MISSOURI)
CITY OF ST. LOUIS) SS.

Earle J. Niederluecke, being duly sworn, upon his oath states that he is the attorney for the Jefferson Bank and Trust Company, and that the statements in the foregoing motion are true according to his best information and belief.

Subscribed and sworn to before me this 4th day of October, 1963.

Elmer H. Grimm
Notary Public

NOTARY PUBLIC, COMMISSIONED FOR COUNTY OF ST. LOUIS, WHICH ADJOINS CITY OF ST. LOUIS WHERE THIS ACT WAS PERFORMED. MY TERM EXPIRES 4/21/64

My term expires:

'ym. 10/7/63
Michael J. Dyett
Judge.

STATE OF MISSOURI)
)
CITY OF ST. LOUIS)

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS,
STATE OF MISSOURI

JEFFERSON BANK AND TRUST COMPANY, a corporation, Plaintiff, vs. ROBERT CURTIS, WILLIAM L. CLAY, CHARLES R. OLDHAM, MARIAN OLDHAM, LUCIEN RICHARDS, RICHARD DALY, WALTER HAYS, REV. CHARLES PERKINS, NORMAN SEAY, HERMAN THOMPSON, MELVIN WEST, Individually and as representatives of a class known as St. Louis Committee of Racial Equality, Defendants.	Cause No. 57945 Div. No. 2

APPLICATION BY JEFFERSON BANK AND TRUST COMPANY FOR [redacted] CITATION

TO THE ABOVE NAMED COURT AND TO THE HONORABLE MICHAEL J. SCOTT, Judge Presiding:

The petition of the plaintiff, Jefferson Bank and Trust Company, by Wayne L. Millsap, its attorney, respectfully states:

1. That on the 29th day of August, 1963, plaintiff commenced the above entitled action in the Circuit Court of the City of St. Louis at which time plaintiff applied ex parte for a Restraining Order to restrain the defendants individually and as members of a class known as the St. Louis Committee of Racial Equality from performing certain threatened acts in and around plaintiff's place of business at 2600 Washington Avenue in the City of St. Louis, Missouri.

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2. That the Court notified defendant Charles R. Oldham of the application of the plaintiff and he appeared in court and entered his appearance in the above proceeding and stated to the Court that he was the attorney for the St. Louis Committee of Racial Equality.

3. That by agreement of the attorney for the plaintiff and defendant, Charles R. Oldham and the Court, a hearing was set for 10 o'clock A.M. on Friday, August 30, 1963, at which time plaintiff appeared by and through its attorney, Wayne L. Millsap, and attorney Raymond Howard, a member of the St. Louis Committee of Racial Equality entered his appearance on behalf of defendants, Charles R. Oldham and Marian Oldham, Melvin West, Walter Hays, Robert B. Curtis and Richard Daly.

4. That arguments in favor of and against the issuance of a Restraining Order were made to the Court by the aforementioned attorneys in open court and thereafter legal authorities were presented to the Court in chambers, all prior to 4:00 P.M. on August 30, 1963.

5. That after hearing and considering the arguments of counsel and due consideration of the legal authorities presented, Judge Michael J. Scott prior to 4:00 P.M. on August 30, 1963 issued a temporary restraining order, a copy of which order is a part of the record herein and incorporated herein by reference.

6. That Attorney Raymond Howard was presented a copy of the aforementioned Restraining Order by Ferd C. Kaufman, Clerk of the Court and upon the posting of a $10,000.00 bond, Attorney Raymond Howard was advised by Judge Michael J. Scott that the Restraining Order was in full force and effect, all prior to the hour of

4:00 o'clock P.M. on August 30, 1963.

7. That at approximately 4 o'clock P.M. August 30, 1963, certain of the defendants appeared at plaintiff's place of business accompanied by more than one hundred persons, including children, and acting in concert and under the direction and supervision of the defendants herein named, sang, paraded, chanted and shouted in and around plaintiff's place of business, locked arms in front of the entrance to plaintiff's place of business so as to bar entry to and exit from plaintiff's place of business, entered in and upon plaintiff's place of business and did then and there walk in, sit in and lie in the lobby of plaintiff's place of business so that the customers of the plaintiff were prevented, hindered and delayed from having access to the tellers' windows at plaintiff's bank and congregated and loitered individually and in groups forcefully and unlawfully inside plaintiff's banking premises, all in violation of the Temporary Restraining Order of this Court entered as aforesaid.

8. That the following named defendants and each of them were personally served with a copy of the Restraining Order aforesaid, or had notice of said Restraining Order, by having it read to him or her while inside plaintiff's place of business, or handed to him or her outside or inside plaintiff's place of business:

ROBERT B. CURTIS	MARIAN OLDHAM	NORMAN SEAY
WILLIAM L. CLAY	LUCIEN RICHARDS	HERMAN THOMPSON
CHARLES R. OLDHAM	REV. CHARLES PERKINS	RAYMOND HOWARD

9. That the defendants herein named, though having full and complete knowledge of the restraining order issued by this Court,

intentionally violated said temporary restraining order and have stated privately and publicly that they intend to continue to violate the Restraining Order issued by this Court.

10. That the acts of the defendants herein named were performed by said named defendants and others acting in concert with them and under the direction and supervision of the defendants herein named with the deliberate purpose of defeating the temporary restraining order of this Court above referred to and constituted a direct, willful and deliberate violation of the temporary restraining order of this Court dated August 30, 1963 above referred to.

11. That the said acts were performed by the defendants herein named with the full knowledge that the same constituted such a violation.

12. That the acts of the herein named defendants above referred to further constitute a violation of the rights of the plaintiff herein in that said acts constitute a trespass of plaintiff's property, a complete disruption of plaintiff's business, and the said misconduct of the herein named defendants is calculated to and is intended to and does in fact defeat the rights and remedies of your petitioner as a plaintiff in the above entitled action and is causing actual loss and injury to this petitioner.

WHEREFORE, your petitioner prays that ~~an Order to Show Cause be issued~~ A Citation FOR CONTEMPT BE ORDERED TO ISSUE out of this Court directing that the said Robert B. Curtis, William L. Clay, Charles R. Oldham, Marian Oldham, Lucien Richards, Rev. Charles Perkins, Norman Seay, Herman Thompson and Raymond Howard appear at a time and place to be fixed by this court

and then and there to show cause why they, the said Robert B. Curtis, William L. Clay, Charles R. Oldham, Marian Oldham, Lucien Richards, Rev. Charles Perkins, Norman Seay, Herman Thompson and Raymond Howard, should not be punished for said contempt and why your petitioner should not recover its costs and expenses herein and in its behalf, including attorney's fees to be allowed by this Court, and why the Court should not make such other orders and give such other relief as may be just and proper in the premises.

GOODBAR, FERRISS, CASSERLY & MILLSAP,

and Wayne L. Millsap

Wayne L. Millsap
509 Olive Street,
St. Louis 1, Missouri,
Main 1-5204

STATE OF MISSOURI)
) SS.
CITY OF ST. LOUIS)

WAYNE L. MILLSAP, being duly sworn on his oath did say that he is the attorney for the Jefferson Bank and Trust Company, a corporation of the State of Missouri, and that the matters and things stated in the petition are true and correct, except as to those matters stated on information and belief and those he believes to be true.

Wayne L. Millsap

Subscribed and sworn to before me this _____ day of August, 1963. Thelma O'Toole. Clerk of circuit court.

By Ferdie Kaufman. Deputy Clerk. Div 2.

_____
Notary Public

My commission expires _____.

STATE OF MISSOURI)
) SS.
CITY OF ST. LOUIS)

THE STATE OF MISSOURI,

TO Martin L. Tozer, Sheriff of the City of St. Louis, X Missouri,

GREETING:

We command that you do forthwith, without excuse or delay, bring, or cause to be brought, before the Honorable Circuit Court of the City of St. Louis, and in Division No. 2 thereof, on Monday Sept 9, 1963 at 10:00 the bodies of

_____

_____

_____

To: ROBERT B. CURTIS, 4421 McPherson, St. Louis, Missouri,
WILLIAM L. CLAY, 5474 Clemens Avenue, St. Louis, Missouri,
CHARLES R. OLDHAM and MARIAN OLDHAM, 5227 Westminster, St.Louis, Mo.
LUCIEN RICHARDS, 5159 Enright, St. Louis, Missouri,
REV. CHARLES PERKINS, 4340 Labadie, St. Louis, Missouri,
NORMAN SEAY, 915 Walton, St. Louis, Missouri,
HERMAN THOMPSON, 4501 N. Newstead, St. Louis, Missouri.
RAYMOND HOWARD, 1315-A Bayard Street, St. Louis, Missouri.

_____

_____

_____

_____

BY WHATEVER NAMES OR additions they are known or called, then and there to have them before the Court in Cause No. 57945-E wherein Jefferson Bank and Trust Company, a corporation, is plaintiff, and Robert B. Curtis, William L. Clay, Charles R. Oldham and Marian Oldham, Lucien Richards, Richard Daly, Walter Hays, Rev. Charles Perkins, Norman Seay, Herman Thompson and Melvin West are defendants, and have with you this writ return indorsed thereon, and herein fail not at your peril.

- - - - - - - - - - - - - - - - - - - -

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at office, in the City of St. Louis this day of 1963.

PHELIM O'TOOLE
Clerk, Circuit Court

Division No. 2.

By: Fred L. Kaufmann
Deputy. Div 2

Executed this answer of Court in my [illegible]
St Louis Mo on the 31st day of August 1963 by
Attaching and taking into my custody the following persons
listed herein, Marion Aldham and Herman Thompson
Robert Curtis, William L. Clay, Charlie Aldham, Lucien
Richards, Rev Charles Perkins, Norman Hardy and Raymond
Howard surrendered themselves into my custody on
September 1st 1963. Thereafter on September 1st 1963
Marion Aldham, Herman Thompson, Raymond Howard
and William C. Clay [illegible] their recognizance with
Amount of $ 10,000 [illegible] with the Sheriff which
bond is attached hereto and made part of
this return. Thereafter, on the 1st day of Sept. 1963
I conveyed the following persons to the City Jail,
Marion Aldham, and Herman Thompson, Thereafter on
9/1/63 I conveyed to the City Jail, Robert Curtis, Willis Clay,
Charlie Aldham, Lucien Richards, Rev Charles Perkins, Norman
Hardy and Raymond Howard. Three persons being bond
were released Sept 1st and the remaining persons
were held in custody in the City Jail and are
now before the Court this 3rd day of September 1963.

Martin L. Tager, Sheriff
By D. J. Lorie, Jr.
Nathan Burns, Deputy

STATE OF MISSOURI)
) SS.
CITY OF ST. LOUIS)

THE STATE OF MISSOURI,

TO Martin L. Tozer, Sheriff of the City of St. Louis, Missouri, GREETING:

We command that you do forthwith, without excuse or delay, bring or cause to be brought before the Honorable Circuit Court of the City of St. Louis, and in Division No. 2 thereof the bodies of: Mickey Grand, James Peake, Jadie Walters, Danny Pollock, Naomi Robinson,

and any and all other persons who shall with knowledge of Temporary Restraining Order heretofore issued in this proceeding shall violate said Restraining Order by physically hindering or interfering with persons desiring to enter or leave Jefferson Bank and Trust Company, standing, lying and sitting in said bank and thus interfering with normal conduct of said banking business, and standing and milling inside said banking premises and hindering and interfering with access by the public to plaintiff's banking facilities.

BY WHATEVER NAMES OR additions they are known or called, then and there to have them before the Court in Cause No. 57945-E wherein Jefferson Bank and Trust Company, a corporation, is plaintiff, and Robert B. Curtis, William L. Clay, Charles R. Oldham, Marian Oldham, Lucien Richards, Richard Daly, Walter Hays, Rev. Charles Perkins, Norman Seay, Herman Thompson and Melvin West are defendants, and have with you this writ return indorsed thereon, and herein fail not at your peril.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at office, in the City of St. Louis this day of , 1963

PHELIM O'TOOLE
Clerk, Circuit Court

Div. No. 2

By: Ferd McKay Deputy Div 2

P7

Executed this order of Court in the City of ...
7 day of 10 1963 by delivering ...
same on the within named defendant Jadene Walter

MARTIN L. TOZER, SHER...
Louis DEPUTY

Executed this order of Court in the City of St. ...
7 day of 10 1963 by delivering ...
same on the within named defendant James Peake

MARTIN L. TOZER, SHER...
Louis DEPUTY

Executed this order of Court in the City of St. Lo...
7 day of 10 1963, by delivering a co...
same on the within named defendant Mickey Stained

MARTIN L. TOZER, SHER...
Louis DEPUTY

Executed this order of Court in the City of St. L...
7 day of 10 1963, by delivering a c...
same on the within named defendant Nona Robinson

MARTIN L. TOZER, SHERIFF
Louis DEPUTY

Executed this order of Court in the City of St. Louis, Missou...
7 day of 10 1963, by delivering a copy of th...
same on the within named defendant Danny Pallock

MARTIN L. TOZER, SHERI...
Louis DEPUTY

FILED
OCT 7 1963
PHELIM O TOOLE CLERK
DEPUTY

STATE OF MISSOURI)
) SS.
CITY OF ST. LOUIS)

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS

STATE OF MISSOURI

IN RE: MICHELA GRAND) CONTEMPT OF COURT

FINDINGS OF FACT AND JUDGMENT

It is hereby found that on August 30, 1963, at 1:55 P.M., in the Circuit Court of the City of St.Louis, Missouri, in Division Number Two thereof, in the case of Jefferson Bank and Trust Company, a corporation vs. Robert Curtis, William L. Clay, Charles R. Oldham, Marian Oldham, Lucien Richards, Richard Daly, Walter Hays, Rev. Charles Perkins, Norman Seay, Herman Thompson, Melvin West, individually and as representatives of a class known as St. Louis Committee of Racial Equality, Cause No. 57945, the following Temporary Restraining Order was made and entered by the Court aforesaid.

> "Temporary Restraining Order ordered to issue as to all defendants individually and as representatives of a class known as St. Louis Committee of Racial Equality from:
>
> "(a) Physically hindering, obstructing, interfering with, delaying, molesting orharrassing other persons desiring to enter plaintiff's banking premises, from entering saidpremises for the purpose of conducting their business with plaintiff or for any other purpose.
>
> "(b) Congregating or loitering individually or in groups inside plaintiff's banking premises and therein

engage in any acts or conduct of whatsoever character which interfere with, intimidates, harrasses, hinders, and annoys plaintiff's employees in the performance of their duties or other persons in the conduct of their business with plaintiff or which in any way interferes with the proper and normal conduct of plaintiff's banking business.

"(c) Physically hindering, obstructing, interfering with, intimidating or in any other manner preventing customers of plaintiff and other members of thepublic from having the usual and customary access to tellers' windows located in plaintiff's banking premises or access to any other department or portions of said banking premises wherein plaintiff conducts its banking business.

"IT IS FURTHER ORDERED, that, until the hearing of said motion and order therein, the defendants do absolutely desist and refrain from:

"(a) Physically hindering, obstructing, interfering with, delaying, molesting or harrassing other persons desiring to enter plaintiff's banking premises, from entering said premises for the purpose of conducting their business with plaintiff or for any other purpose.

"(b) Congregating or loitering individually or in groups inside plaintiff's banking premises and therein engage in any acts or conduct of whatsoever character which interferes with, intimidates, harrasses,hinders and annoys plaintiff's employees in the performance of their duties or other persons in the conduct of their business with plaintiff or which in any way interferes with the proper and normal conduct of plaintiff's banking business.

"(c) Physically hindering, obstructing, interfering with, intimidating or in any other manner preventing customers of plaintiff and other members of the pblic from having the usual and customary access to tellers' windows located in plaintiff's banking premises or access to any other department or portion of said banking premises wherein plaintiff conducts its banking business.

"IT IS FURTHER ORDERED THAT PLAINTIFF post bond in the sum of Ten Thousand Dollars ($10,000.00).

"Defendants ordered to show cause in Division 2 of the Circuit Court of the City of St.Louis, Missouri, on

Thursday, September 26, 1963, at ten o'clock A.M. why a temporary injunction should not be granted as prayed."

/S/ MICHAEL J. SCOTT
August 30, 1963 1:55 P.M. "

It is further found that the Temporary Restraining Order aforesaid was in full force and effect from August 30, 1963 through the present date of these proceedings.

It is further found that this cause came on on the 7th day of October, 1963, on verified application for contempt citation pursuant to Rule 92.15, Supreme Court rules; and Attachment thereupon issued to Martin L. Tozer, Sheriff of the City of St.Louis, commanding the attachment of Michela Grand; said attachment was returned executed, and said Michela Grand appeared before the Court on October 7, 1963, at which time the following Notice was read in open Court to the said Michela Grand by the Honorable Michael J. Scott, presiding Judge:

"Whereas on the 30th day of August, 1963 the Circuit Court of theCity of St. Louis, Division No. 2, issued a Restraining Order which provided that the following acts and conduct were restrained:

"(a) Physically hindering, obstructing, interfering with, delaying, molesting or harrassing other persons desiring to enter plaintiff's banking premises, from entering said premises for the purpose of conducting their business with plaintiff or for any other purpose.

"(b) Congregating or loitering individually or in groups inside plaintiff's banking premises and therein engage in any acts or conduct of whatsoever character which interferes with, intimidates, harrasses, hinders, and annoys plaintiff's employees in the performance of their duties or other persons in the conduct of their business with plaintiff or which in any way interferes with the proper and normal conduct ofplaintiff's banking business.

"(c) Physically hindering, obstructing, interfering with, intimidating or in any other manner preventing customers of plaintiff and other members of the public from having the usual and customary access to tellers' windows located in plaintiff's banking premises or access to any other department or portion of said banking premises wherein plaintiff conducts its banking business.

"You are hereby charged with wilfull disobedience on October 7th, 1963 of said Restraining Order lawfully issued in one or more of the following particulars and with full knowledge and notice of said Restraining Order:

"(1) Physically hindering and preventing customers of plaintiff and other members of the public from entering and leaving plaintiff's place of business by locking arms in front of entrances.

"(2) By entering said banking premises and sitting in, lying in, standing in, milling about and singing and chanting therein and thereby interfering with the proper and normal conduct of plaintiff's banking business.

"(3) Standing and loitering in front of tellers' windows so as to prevent customers of plaintiff's bank from utilizing the facilities for the conduct of their proper and normal business with the plaintiff.

"(4) Harrassing plaintiff and hindering and interfering with the proper and normal conduct of plaintiff's business by entering said bank for the purpose ofmaking change which purpose was solely to harrass plaintiff and interfere with the normal conductof its business.

"(5) Harrassing plaintiff and hindering and interfering with the proper and normal conduct of plaintiff's business by entering said bank for the purpose of becoming customers of the bank which purpose was solely to harrass plaintiff and interfere with the normal conduct of its business.

"(6) Refusing to leave plaintiff's banking premises after having been requested to do so and by so refusing to harrass plaintiff and interfere with the normal conduct of plaintiff's business.

"The foregoing charges and specifications constitute offenses against the Majesty of the Law and the dignity and authority of this Court and are punishable as for criminal contempt.

"You are hereby ordered to show cause at ten o'clock A.M., on Monday, October 10, 1963, why you should not be punished as for criminal contempt."

Thereafter, hearing pursuant to the Order to Show Cause was continued from day to day; that the said Michela Grand was, on October 7, 1963, committed to the City Jail until bond was given in the amount of One Thousand Five Hundred Dollars ($1,500.00), which said bond was subsequently furnished by the said Michela Grand; further that on October 7th, 1963, Wayne L. Millsap and John P. Montrey were appointed by the Court to present evidence touching upon the aforesaid charges.

It is further found that the hearing pursuant to the aforesaid Notice was commenced on October 14, 1963, and continued from day to day and evidence adduced; that alleged contemnor Michela Grand appeared and was represented by counsel, and had full opportunity to defend this action and to present testimony and evidence.

Itis further found that the Michela Grand was less than twenty-one (21) years of age, and that on October 10, 1963, Wyvetter Hoover Younge was appointed Guardian ad Litem for Michela Grand,the said guardian having, in open Court, consented to so act.

It is further found that Michela Grand was aware of and had actual notice of the issuance of the Court's Restraining Order prior to her entry into the banking premises on October 7, 1963, as hereafter found; such actual notice was received by the said Michela Grand by being outside the premises of the Jefferson Bank and Trust Company on October 7, 1963, when notices concerning said

Restraining Order were read over a public address system there at said bank; further, that copies of said Restraining Order were posted about the premises of the bank in such positions that the said Michela Grand saw or should have seen the same; further that while the said Michela Grand was inside the banking premises on October 7, 1963, a copy of the Court's Restraining Order was given to her by a Deputy Sheriff of this Court.

It is further found that Michela Grand, with actual notice as aforesaid, and acting in concert and participation with and aiding and abetting one or more of the persons named as defendants in the aforesaid Jefferson Bank and Trust Company vs. Robert Curtis, et al., did wilfully disobey and violate said Restraining Order by:

(1) Harrassing plaintiff and hindering and interfering with the proper and normal conduct of plaintiff's business by entering said bank for the purpose of making change, which purpose was solely to harrass plaintiff and interfere with the normal conduct of its business.

(2) Refusing to leave plaintiff's banking premises after having been requested to do so and by so refusing to harrass plaintiff and interfere with the normal conduct of plaintiff's business.

(3) by entering said banking premises and lying in said premises and thereby interfering with the proper and normal conduct of plaintiff's banking business.

It is further found, adjudged and decreed that the aforesaid acts and conduct constitute offenses against the Majesty of the Law and the dignity and authority of this Court.

It is further found, adjudged and decreed that alleged contemnor Michela Grand is guilty of wilfull disobedience of said Temporary Restraining Order and is punishable as for criminal contempt.

It is adjudged and decreed that contemnor Michela Grand, be confined to the City Jail of the City of St. Louis for the period of one hundred twenty (120) days and pay a fine to the St. Louis Circuit Clerk of Criminal Causes in the sum of Five Hundred Dollars ($500.00), and to pay one-third of the costs of this action, and that Martin L. Tozer, theSheriff of the City of St. Louis, shall, without delay remove and safely convey the said contemnor Michela Grand to the City Jail of theCity of St. Louis,there to be kept confined and treated in the manner directed by law, and the Warden of said City Jail of the City of St. Louis is required to receive and safely keep her, the said Michela Grand, in the City Jail of the City of St. Louis, aforesaid, until the judgment and sentence of the Court herein are complied with and all costs paid or until the said defendant shall be otherwise discharged by due course of law.

Date: 10/25/63

Michael J. Scott
Circuit Court Judge

Dw. 2.

STATE OF MISSOURI)
) SS.
CITY OF ST. LOUIS)

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS

STATE OF MISSOURI

IN RE: DANIEL (DANNY) POLLACK) CONTEMPT OF COURT

FINDINGS OF FACT AND JUDGMENT

It is hereby found thaton August 30, 1963, at 1:55 P.M., in the Circuit Court of the City of St. Louis, Missouri, in Division Number Two thereof, in the case of Jefferson Bank and Trust Company, a corporation vs. Robert Curtis, William L. Clay, Charles R. Oldham, Marian Oldham, Lucien Richards,Richard Daly, Walter Hays, Rev. Charles Perkins, Norman Seay, Herman Thompson, Melvin West, individually and as representatives of a class known as St. Louis Committee of Racial Equality, cause no. 57945, the following Temporary Restraining Order was made and entered by the Court aforesaid.

"Temporary Restraining Order ordered to issue as to all defendants individually and as representatives of a class known as St. Louis Committee of Racial equality, from:

"(a) Physically hindering, obstructing, interfering with, delaying, molesting or harrassing other persons desiring to enter plaintiff's banking premises, from entering said premises for the purpose of conducting their business with plaintiff or for any other purpose.

"(b) Congregating or loitering individually or in groups inside plaintiff's banking premises and therein

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engage in any acts or conduct of whatsoever character which interfere with, intimidates, harrasses, hinders, and annoys plaintiff's employees in the performance of their duties or other persons in the conduct of their business with plaintiff or which in any way interferes with the proper and normal conduct of plaintiff's banking business.

"(c) Physically hindering, obstructing, interfering with, intimidating or in any other manner preventing customers of plaintiff and other members of the public from having the usual and customary access to tellers' windows located in plaintiff's banking premises or access to any other department or portions of said banking premises wherein plaintiff conducts its banking business.

"IT IS FURTHER ORDERED, that, until the hearing of said motion and order therein, the defendants do absolutely desist and refrain from:

"(a) Physically hindering, obstructing, interfering with, delaying, molesting or harrassing other persons desiring to enter plaintiff's banking premises, from entering said premises for the purpose of conducting their business with plaintiff or for any other purpose.

"(b) Congregating or loitering individually or in groups inside plaintiff's banking premises and therein engage in any acts or conduct of whatsoever character which interferes with, intimidates, harrasses, hinders and annoys plaintiff's employees in the performance of their duties or other persons in the conduct of their business with plaintiff or which in any way interferes with the proper and normal conduct of plaintiff's banking business.

"(c) Physically hindering, obstructing, interfering with, intimidating or in any other manner preventing customers of plaintiff and othermembers of thepublic from having the usual and customary access to tellers' windowslocated in plaintiff's banking premises or access to any other department or portion of said banking premises wherein plaintiff conducts its banking business.

"IT IS FURTHER ORDERED THAT PLAINTIFF post bond in the sum of Ten Thousand Dollars ($10,000.00).

"Defendants ordered to show cause in Division 2 of theCircuit Court of the City of St. Louis, Missouri, on

Thursday, September 26, 1963, at ten o'clock A.M. why a temporary injunction should not be granted as prayed."

/S/ MICHAEL J. SCOTT
August 30, 1963 1:55 P.M. "

It is further found that the Temporary Restraining Order aforesaid was in full force and effect from August 30, 1963 through the present date of these proceedings.

It is further found that this cause came on on the 7th day of October, 1963, on verified application for contempt citation pursuant to Rule 92.15, Supreme Court rules; and Attachment thereupon issued to Martin L. Tozer, the Sheriff of the City of St. Louis, commanding the attachment of Daniel (DANNY) Pollack; said attachment was returned executed, and said Daniel (DANNY) Pollack appeared before the Court on October 7, 1963, at which time the following Notice was read in open Court to the said Daniel (DANNY) Pollack by the Honorable Michael J. Scott, presiding Judge:

> "Whereas, on the 30th day of August, 1963, the Circuit Court of the City of St. Louis, Division No. 2, issued a Restraining Order which provided that the following acts and conduct were restrained:
>
> "(a) Physically hindering, obstructing, interfering with, delaying, molesting or harrassing other persons desiring to enter plaintiff's banking premises, from entering said premises for the purpose of conducting their business with plaintiff or for any other purpose.
>
> "(b) Congregating or loitering individually or in groups inside plaintiff's banking premises and therein engage in any acts or conduct of whatsoever character which interferes with, intimidates, harrasses, hinders, and annoys plaintiff's employees in the performance of their duties or other persons in the conduct of their business with plaintiff or which in any way interferes with the proper and normal conduct of plaintiff's banking business.

"(c) Physically hindering, obstructing, interfering with, intimidating or in any other manner preventing customers of plaintiff and other members of the public from having the usual and customary access to tellers' windows located in plaintiff's banking premises or access to any other department or portion of said banking premises wherein plaintiff conducts its banking business.

You, are hereby charged with wilfull disobedience on October 7, 1963 of said Restraining Order lawfully issued in one or more of the following particulars and with full knowledge and notice of said Restraining Order:

"(1) Physically hindering and preventing customers of plaintiff and other members of the public from entering and leaving plaintiff's place of business by locking arms in front of entrances.

"(2) By entering said banking premises and sitting in, lying in, standing in, milling about and singing and chanting therein and thereby interfering with the proper and normal conduct of plaintiff's banking business.

"(3) Standing and loitering in front of tellers' windows so as to prevent customers of plaintiff's bank from utilizing the facilities for the conduct of their proper and normal business with the plaintiff.

"(4) Harrassing plaintiff and hindering and interfering with the proper and normal conduct of plaintiff's business by entering said bank for the purpose of making change which purpose was solely to harrass plaintiff and interfere with the normal conduct of its business.

"(5) Harrassing plaintiff and hindering and interfering with the proper and normal conduct of plaintiff's business by entering said bank for the purpose of becoming customers of the Bank which purpose was solely to harrass plaintiff and interfere with thenormal conduct of its business.

"(6) Refusing to leave plaintiff's banking premises after having been requested to do so and by so refusing to harrass plaintiff and interfere with the normal conduct of plaintiff's business.

"The foregoing charges and specifications constitute offenses against the Majesty of the Law and the dignity and authority of thisCourt and are punishable as for criminal contempt.

"You are hereby ordered to show cause at ten o'clock A.M., on Monday, October10, 1963, why you should not be punished as for criminal contempt."

Thereafter, hearing pursuant to the Order to Show Cause was continued from day to day; that the said Daniel (DANNY) Pollack was, on October 7, 1963, committed to the City Jail until bond was given in the amount of One Thousand Five Hundred Dollars ($1,500.00), which said bond was subsequently furnished by the said Daniel (DANNY) Pollack; further that on October 7, 1963, Wayne L. Millsap and John P. Montrey were appointed by the Court to present evidence touching upon the aforesaid charges.

It is further found that the hearing pursuant to the aforesaid Notice was commenced on October 14, 1963 and continued from day to day and evidence adduced; that alleged contemnor Daniel (DANNY) Pollack appeared and was represented by counsel, and had full opportunity to defend this action and to present testimony and evidence.

It is further found that Daniel (DANNY) Pollack was less than twenty-one (21) years of age, and that on October 10, 1963, Wyvetter Hoover Younge was appointed Guardian ad Litem for Daniel (DANNY) Pollack, the said guardian having, in open Court, consented to so act.

It is further found that Daniel (DANNY) Pollack was aware of and had actual notice of the issuance of theCourt's Restraining Order prior to his entry into the banking premises on October 7, 1963, as hereafter found; such actual notice was received by said Daniel (DANNY) Pollack by being outside the premises of the Jefferson Bank and Trust Company on October 7, 1963, when notices concerning said Restraining Order were read over a public address system there at said bank; further, that copies of said Restraining Order were posted about the premises of the bank in such positions that the said Daniel (DANNY) Pollacksaw or should have seen the same; further, that while the said Daniel (DANNY) Pollack,

was inside the banking premises on October 7, 1963, a copy of the Court's Restraining Order was given to him by a Deputy Sheriff of this Court.

It is further found that Daniel Pollack (Dawny), with actual notice as aforesaid, and acting in concert and participation with and aiding and abetting one or more of the persons named as defendants in the aforesaid Jefferson Bank and Trust Company vs. Robert Curtis, et al., did wilfully disobey and violate said Restraining Order by:

(1) Harrassing plaintiff and hindering and interfering with the proper and normal conduct of plaintiff's business by entering said bank for the purpose of making change, which purpose was solely to harrass plaintiff and interfere with the normal conduct of its business.

(2) Refusing to leave plaintiff's banking premises after having been requested to do so and by so refusing to harrass plaintiff and interfere with the normal conduct of plaintiff's business.

(3) By entering said banking premises and lying in said premises and thereby interfering with the proper and normal conduct of plaintiff's banking premises.

It is further found, adjudged and decreed that the aforesaid acts and conduct constitute offenses against the Majesty of the Law and the dignity and authority of this Court.

It is further found, adjudged and decreed that alleged contemnor Daniel Pollack (Dawny) is guilty of wilfull disobedience of said Temporary Restraining Order and is punishable as for criminal contempt.

It is adjudged and decreed that contemnor Daniel (DANNY) Pollack, be confined to the City Jail of the City of St. Louis for the period of sixty days (60) and pay a fine to the St. Louis Circuit Clerk of Criminal Causes in the sum of Five Hundred Dollars ($500.00), and to pay one-third of the costs of this action, and that Martin L. Tozer, Sheriff of the City of St.Louis, Missouri, shall, without delay remove and safely convey the said contemnor Daniel (DANNY) Pollack to the City Jail of the City of St.Louis, there to be kept confined and treated in the manner directed by law, and the Warden of said City Jail of the Cityof St. Louis is required to receive and safely keep him, the said Daniel (DANNY) Pollack, in the City Jail of the City of St. Louis, aforesaid, until the judgment and sentence of the Court herein are complied with and all costs paid or until the said defendant shall be otherwise discharged by due course of law.

Michael J. Scott

Michael J. Scott
Circuit Court Judge

DATE: 10/25/63

Dw. 2.

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STATE OF MISSOURI)
) SS.
CITY OF ST. LOUIS)

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS

STATE OF MISSOURI

IN RE: JAMES PEAKE, JR.)
)
) CONTEMPT OF COURT
)

FINDINGS OF FACT AND JUDGMENT

It is hereby found that on August 30, 1963, at 1:55 P.M., in the Circuit Court of the City of St. Louis, Missouri, in Division Number Two thereof, in the case of Jefferson Bank and Trust Company, a corporation vs. Robert Curtis, William L. Clay, Charles R. Oldham, Marian Oldham, Lucien Richards, Richard Daly, Walter Hays, Rev. Charles Perkins, Norman Seay, Herman Thompson, Melvin West, individually and as representatives of a class known as St. Louis Committee of Racial Equality, Cause No. 57945, the following Temporary Restraining Order was made and entered by the Court aforesaid.

> "Temporary Restraining Order ordered to issue as to all defendants individually and as representatives of a class known as St. Louis Committee of Racial Equality from:
>
> "(a) Physically hindering, obstructing, interfering with, delaying, molesting or harassing other persons desiring to enter plaintiff's banking premises, from entering said premises for the purpose of conducting their business with plaintiff or for any other purpose.
>
> "(b) Congregating or loitering individually or in groups inside plaintiff's banking premises and therein

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engage in any acts or conduct of whatsoever character which interfere with, intimidates, harasses, hinders and annoys plaintiff's employees in the performance of their duties or other persons in the conduct of their business with plaintiff or which in any way interferes with the proper and normal conduct of plaintiff's banking business.

"(c) Physically hindering, obstructing, interfering with, intimidating or in any other manner preventing customers of plaintiff and other members of the public from having the usual and customary access to tellers' windows located in plaintiff's banking premises or access to any other department or portions of said banking premises wherein plaintiff conducts its banking business.

"IT IS FURTHER ORDERED that, until the hearing of said motion and order therein, the defendants do absolutely desist and refrain from:

"(a) Physically hindering, obstructing, interfering with, delaying, molesting or harassing other persons desiring to enter plaintiff's banking premises, from entering said premises for the purpose of conducting their business with plaintiff or for any other purpose.

"(b) Congregating or loitering individually or in groups inside plaintiff's banking premises and therein engage in any acts or conduct of whatsoever character which interferes with, intimidates, harasses, hinders and annoys plaintiff's employees in the performance of their duties or other persons in the conduct of their business with plaintiff or which in any way interferes with the proper and normal conduct of plaintiff's banking business.

"(c) Physically hindering, obstructing, interfering with, intimidating or in any other manner preventing customers of plaintiff and other members of the public from having the usual and customary access to tellers' windows located in plaintiff's banking premises or access to any other department or portion of said banking premises wherein plaintiff conducts its banking business.

"IT IS FURTHER ORDERED THAT PLAINTIFF post bond in the sum of Ten Thousand Dollars ($10,000.00).

"Defendants ordered to show cause in Division 2 of the Circuit Cout of the City of St. Louis, Missouri, on

Thursday, September 26, 1963, at ten o'clock A.M. why a temporary injunction should not be granted as prayed."

/S/ MICHAEL J. SCOTT
August 30, 1963 1:55 P.M. "

It is further found that the Temporary Restraining Order aforesaid was in full force and effect from August 30, 1963 through the present date of these proceedings.

It is further found that this cause came on on the 7th day of October, 1963, on verified application for contempt citation pursuant to Rule 92.15, Supreme Court rules; and Attachment thereupon issued to Martin L. Tozer, Sheriff of the City of St. Louis, commanding the attachment of James Peake, Jr.; said attachment was returned executed, and said James Peake, Jr., appeared before the Court on October 7, 1963, at which time the following Notice was read in open Court to the said James Peake, Jr., by the Honorable Michael J. Scott, presiding Judge:

> "Whereas on the 30th day of August, 1963 the Circuit Court of the City of St. Louis, Division No. 2, issued a Restraining Order which provided that the following acts and conduct were restrained:
>
> "(a) Physically hindering, obstructing, interfering with, delaying, molesting or harassing other persons desiring to enter plaintiff's banking premises, from entering said premises for the purpose of conducting their business with plaintiff or for any other purpose.
>
> "(b) Congregating or loitering individually or in groups inside plaintiff's banking premises and therein engage in any acts or conduct of whatsoever character which interferes with, intimidates, harrasses, hinders, and annoys plaintiff's employees in the performance of their duties or other persons in the conduct of their business with plaintiff or which in any way interferes with the proper and normal conduct of plaintiff's banking business.

"(c) Physically hindering, obstructing, interfering with, intimidating or in any other manner preventing customers of plaintiff and other members of the public from having the usual and customary access to tellers' windows' located in plaintiff's banking premises or access to any other department or portion of said banking premises wherein plaintiff conducts its banking business.

"You are hereby charged with willful disobedience on October 7th, 1963 of said Restraining Order lawfully issued in one or more of the following particulars and with full knowledge and notice of said Restraining Order:

"(1) Physically hindering and preventing customers of plaintiff and other members of the public from entering and leaving plaintiff's place of business by locking arms in front of entrances.

"(2) By entering said banking premises and sitting in, lying in, standing in, milling about and singing and chanting therein and thereby interfering with the proper and normal conduct of plaintiff's banking business.

"(3) Standing and loitering in front of tellers' windows so as to prevent customers of plaintiff's bank from utilizing the facilities for the conduct of their proper and normal business with the plaintiff.

"(4) Harrassing plaintiffand hindering and interfering with the proper and normal conduct of plaintiff's business by entering said bank for the purpose of making change which purpose was solely to harrass plaintiff and interfere with the normal conduct of its business.

"(5) Harrassing plaintiff and hindering and interfering with the proper and normal conduct of plaintiff's business by entering said bank for the purpose of becoming customers of the bank which purpose was solely to harrass plaintiff and interfere with the normal conduct of its business.

"(6) Refusing to leave plaintiff's banking premises after having been requested to do so and by so refusing to harrass plaintiff and interfere with the normal conduct of plaintiff's business.

"The foregoing charges and specifications constitute offenses against the Majesty of the law and the dignity and authority of this Court and are punishable as for criminal contempt.

"You are hereby ordered to show cause at ten o'clock A.M., on Monday, October 10, 1963, why you should not be punished as for criminal contempt."

Thereafter, hearing pursuant to the Order to Show Cause was continued from day to day; that the said James Peake, Jr., was, on October 7, 1963, committed to the City Jail until bond was given in the amount of Five Thousand Dollars ($5,000.00), which said bond was furnished by the said James Peake, Jr., on October 11, 1963; further that on October 7th, 1963, Wayne L. Millsap and John P. Montrey were appointed by the Court to present evidence touching upon the aforesaid charges.

It is further found that the hearing pursuant to the aforesaid Notice was commenced on October 14, 1963 and continued from day to day and evidence adduced; that alleged contemnor James Peake, Jr., appeared, and was represented by counsel, and had full opportunity to defend this action and to present testimony and evidence.

It is further found that James Peake, Jr. was aware of and had actual notice of the issuance of the Court's Restraining Order prior to his entry into the banking premises on October 7, 1963, as hereafter found; such actual notice was received by said James Peake, Jr. by his presence in this Court on Friday, October 4, 1963; and by being outside the premises of the Jefferson Bank and Trust Company on October 7, 1963, when notices concerning said Restraining Order were read over a public address system there at said bank; further, that copies of said Restraining Order were posted about the premises of the bank in such positions that the said James Peake, Jr. saw or should have seen the same; further, that while the said James Peake, Jr.

was inside the banking premises on October 7, 1963, a copy of the Court's Restraining Order was given to him by a Deputy Sheriff of this Court.

It is further found that James Peake, Jr., with actual notice as aforesaid, and acting in concert and participation with and aiding and abetting one or more of the persons named as defendants in the aforesaid Jefferson Bank and Trust Company vs. Robert Curtis, et al., did wilfully disobey and violate said Restraining Order by:

(1) Harrassing plaintiff and hindering and interfering with the proper and normal conduct of plaintiff's business by entering said bank for the purpose of making change, which purpose was solely to harrass plaintiff and interfere with the normal conduct of its business.

(2) Refusing to leave plaintiff's banking premises after having been requested to do so and by so refusing to harrass plaintiff and interfere with the normal conduct of plaintiff's business.

It is further found, adjudged and decreed that the aforesaid acts and conduct constitute offenses against the majesty of the law and the dignity and authority of this Court.

It is further found, adjudged and decreed that alleged contemnor James Peake, Jr., is guilty of wilfull disobedience of said Temporary Restraining Order and is punishable as for criminal contempt.

It is adjudged and decreed that contemnor James Peake, Jr., be confined to the City Jail of the City of St.Louis for the period

of one year, and pay a fine to the St. Louis Circuit Clerk of Criminal Causes in the sum of Five Hundred Dollars ($500.00), and to pay one-third of the costs of this action, and that Martin L. Tozer, the Sheriff of theCity of St.Louis, shall, without delay remove and safely convey the said contemnor James Peake, Jr., to the City Jail of the City of St. Louis, there to be kept, confined and treated in the manner directed by law, and the Warden of said City Jail of the City of St. Louis is required to receive and safely keep him, the said James Peake, Jr., in the City Jail of the City of St. Louis, aforesaid, until the judgment and sentence of the Court herein are complied with and all costs paid or until the said defendant shall be otherwise discharged by due course of law.

Michael J. Scott

Date: 10/25/63

Michael J. Scott
Circuit Court Judge

Div. 2.

9a

STATE OF MISSOURI)
) SS.
CITY OF ST. LOUIS)

ORDER OF COMMITMENT

THE STATE OF MISSOURI

To Martin L. Tozer, Sheriff of the City of St. Louis, Missouri,

GREETING;

Whereas, on the 25th day of October, 1963, at the Circuit Court of the City of St. Louis, State of Missouri, Division No. 2, before The Honorable Michael J. Scott, the Judge thereof, Michela Grant was convicted of contempt of court and sentenced to imprisonment in the City Jail of the City of St. Louis for the term of one hundred twenty days, and fined the sum of Five Hundred Dollars, and one-third of the costs of said action in that behalf accrued.

The particular circumstances of said offense are set forth as follows as required by Section 476.140, of the Missouri Revised Statutes:

That on the 30th day of August, 1963, at 1:55 P.M., in the Circuit Court of the City of St. Louis, Missouri, in Division Number Two thereof, in the case of Jefferson Bank and Trust Company, a corporation vs. Robert Curtis, William L. Clay, Charles R. Oldham, Marian Oldham, Lucien Richards, Richard Daly, Walter Hays, Rev. Charles Perkins, Norman Seay, Herman Thompson, Melvin West, individually and as representatives of a class known as St. Louis Committee of Racial Equality, Cause No. 57945, the following Temporary Restraining Order was made and entered by the Court aforesaid.

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"Temporary Restraining Order ordered to issue as to all defendants individually and as representatives of a class known as St. Louis Committee of Racial Equality from:

"(a) Physically hindering, obstructing, interfering with, delaying, molesting or harassing other persons desiring to enter plaintiff's banking premises, from entering said premises for the purpose of conducting their business with plaintiff or for any other purpose.

"(b) Congregating or loitering individually or in groups inside plaintiff's banking premises and therein engage in any acts or conduct of whatsoever character which interfere with, intimidates, harasses, hinders and annoys plaintiff's employees in the performance of their duties or other persons in the conduct of their business with plaintiff or which in any way interferes with the proper and normal conduct of plaintiff's banking business.

"(c) Physically hindering, obstructing, interfering with, intimidating or in any other manner preventing customers of plaintiff and other members of the public from having the usual and customary access to tellers' windows located in plaintiff's banking premises or access to any other department or portions of said banking premises wherein plaintiff conducts its banking business.

"IT IS FURTHER ORDERED that, until the hearing of said motion and order therein, the defendants do absolutely desist and refrain from:

"(a) Physically hindering, obstructing, interfering with, delaying, molesting or harassing other persons desiring to enter plaintiff's banking premises, from entering said premises for the purpose of conducting their business with plaintiff or for any other purpose.

"(b) Congregating or loitering individually or in groups inside plaintiff's banking premises and therein engage in any acts or conduct of whatsoever character which interferes with, intimidates, harasses, hinders and annoys plaintiff's employees in the performance of their duties or other persons in the conduct of their business with plaintiff or which in any way interferes with the proper and normal conduct of plaintiff's banking business.

"(c)Physically hindering, obstructing, interfering with, intimidating or in any other manner preventing customers of plaintiff and other members of the public from having the usual and customary access to tellers' windows located in plaintiff's banking premises or access to any other department or portion of said banking premises wherein plaintiff conducts its banking business.

"IT IS FURTHER ORDERED THAT PLAINTIFF post bond in the sum of Ten Thousand Dollars ($10,000.00).

"Defendants ordered to show cause in Division 2 of the Circuit Court of the City of St. Louis, Missouri, on Thursday, September 26, 1963, at ten o'clock A.M., why a Temporary injunction should not be granted as prayed."

/S/ MICHAEL J. SCOTT
August 30, 1963 1:55 P.M."

That on the 7th day of October, 1963, said Temporary Restraining Order was in full force and effect; that said Michela Grant had actual notice and knowledge of said Restraining Order.

That the said Michela Grand, with full notice and knowledge as aforesaid, did willfully disobey and violate said Temporary Restraining Order by:

1) Harrassing plaintiff and hindering and interfering with the proper and normal conduct of plaintiff's business by entering said bank for the purpose of making change which purpose was solely to harass plaintiff and interfere with the normal conduct of its business.

2) Refusing to leave plaintiff's banking premises after having been requested to do so and by so refusing to harass plaintiff and interfere with the normal conduct of plaintiff's business.

3) By entering said banking premises and lying in said premises and thereby interfering with the proper and normal conduct of plaintiff's banking business.

That the aforesaid acts and conduct constitute offenses against the majesty of the law and the dignity and authority of this Court;

That the said Michela Grand, willfully disobeyed said Temporary Restraining Order.

You are therefore commanded to take the body of said Michela Grant in your custody and convey said Michela Grand to the City Jail of the City of St. Louis, and the Warden thereof is hereby commanded to receive said defendant, and there keep said Michela Grand for the said term of one hundred twenty days (120), or until the judgment and sentence of the Court herein are complied with, and all costs paid, or until the said Michela Grand shall be otherwise discharged by due course of law.

And you are further commanded to make return of this writ, how you execute the same, and herein fail not at your peril!

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at office, in the City of St. Louis, Missouri, this 25 day of October, 1963.

PHELIM O'TOOLE Clerk.

By Ferd L. Kaufmann
Deputy Div 2.

STATE OF MISSOURI)
) SS.
CITY OF ST. LOUIS)

ORDER OF COMMITMENT

THE STATE OF MISSOURI

To Martin L. Tozer, Sheriff of the City of St. Louis, Missouri,

GREETING;

Whereas, on the 25th day of October, 1963, at the Circuit Court of the City of St. Louis, State of Missouri, Division No. 2, before the Honorable Michael J. Scott, the Judge thereof, Daniel (DANNY) Pollack was convicted of contempt of court and sentenced to imprisonment in the City Jail of the City of St. Louis for the term of sixty (60) days, and fined the sum of Five Hundred Dollars, and one-third of the costs of said action in that behalf accrued.

The particular circumstances of said offense are set forth as follows, as required by Section 476.140, of the Missouri Revised Statutes:

That on the 30th day of August, 1963, at 1:55 P.M., in the Circuit Court of the City of St. Louis, Missouri, in Division Number Two thereof, in the case of Jefferson Bank and Trust Company, a corporation vs. Robert Curtis, William L. Clay, Charles R. Oldham, Marian Oldham, Lucien Richards, Richard Daly, Walter Hays, Rev. Charles Perkins, Norman Seay, Herman Thompson, Melvin West, individually and as representatives of a class known as St. Louis Committee of Racial Equality, Cause No. 57945, the following Temporary Restraining Order was made and entered by the Court aforesaid.

P 9 B

"Temporary Restraining Order ordered to issue as to all defendants individually and as representatives of a class known as St. Louis Committee of Racial Equality from:

"(a) Physically hindering, obstructing, interfering with, delaying, molesting or harassing other persons desiring to enter plaintiff's banking premises, from entering said premises for the purpose of conducting their business with plaintiff or for any other purpose.

"(b) Congregating or loitering individually or in groups inside plaintiff's banking premises and therein engage in any acts or conduct of whatsoever character which interfere with, intimidates, harasses, hinders and annoys plaintiff's employees in the performance of their duties or other persons in the conduct of their business with plaintiff or which in any way interferes with the proper and normal conduct of plaintiff's banking business.

"(c) Physically hindering, obstructing, interfering with, intimidating or in any other manner preventing customers of plaintiff and other members of the public from having the usual and customary access to tellers' windows located in plaintiff's banking premises or access to any other department or portions of said banking premises wherein plaintiff conducts its banking business.

"IT IS FURTHER ORDERED that, until the hearing of said motion and order therein, the defendants do absolutely desist and refrain from:

"(a) Physically hindering, obstructing, interfering with, delaying, molesting or harassing other persons desiring to enter plaintiff's banking premises, from entering said premises for the purpose of conducting their business with plaintiff or for any other purpose.

"(b) Congregating or loitering individually or in groups inside plaintiff's banking premises and therein engage in any acts or conduct of whatsoever character which interferes with, intimidates, harasses, hinders and annoys plaintiff's employees in the performance of their duties or other persons in the conduct of their business with plaintiff or which in any way interferes with the proper and normal conduct of plaintiff's banking business.

"(c) Physically hindering, obstructing, interfering with, intimidating or in any other manner preventing customers of plaintiff and other members of the public from having the usual and customary access to tellers' windows located in plaintiff's banking premises or access to any other department or portion of said banking

premises wherein plaintiff conducts its banking business.

"IT IS FURTHER ORDERED THAT PLAINTIFF post bond in the sum of Ten Thousand Dollars ($10,000.00).

"Defendants ordered to show cause in Division 2 of the Circuit Court of the City of St. Louis, Missouri, on Thursday, September 26, 1963, at ten o'clock A.M. why a Temporary injunction should not be granted as prayed."

/S/ MICHAEL J. SCOTT
August 30, 1963 1:55 P.M."

That on the 7th day of October, 1963, said Temporary Restraining Order was in full force and effect; that said Daniel (DANNY) Pollack had actual notice and knowledge of said Restraining Order.

That the said Daniel (DANNY) Pollack with full notice and knowledge as aforesaid, did willfully disobey and violate said Temporary Restraining Order by:

1) Harassing plaintiff and hindering and interfering with the proper and normal conduct of plaintiff's business by entering said bank for the purpose of making change which purpose was solely to harass plaintiff and interfere with the normal conduct of its business.

2) Refusing to leave plaintiff's banking premises after having been requested to do so and by so refusing to harass plaintiff and interfere with the normal conduct of plaintiff's business.

3) By entering said banking premises and lying in said premises and thereby interfering with the proper and normal conduct of plaintiff's banking business.

That the aforesaid acts and conduct constitute offenses against the majesty of the law and the dignity and authority of this Court;

That the said Daniel (DANNY) Pollack willfully disobeyed said Temporary Restraining Order.

You are therefore commanded to take the body of said Daniel (DANNY) Pollack in your custody and convey said Daniel (DANNY) Pollack to the City Jail of the City of St. Louis, and the Warden thereof is hereby commanded to receive said defendant, and there keep said Daniel (DANNY) Pollack for the said term of sixty days (60), or until the judgment and sentence of the Court herein are complied with, and all costs paid, or until the said Daniel (DANNY) Pollack shall be otherwise discharged by due course of law.

And you are further commanded to make return of this writ, how you execute the same, and herein fail not at your peril.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at office, in the City of Saint Louis, Missouri, this 25 day of October, 1963.

PHELIM O'TOOLE

By Fred L. Kaufman
Deputy Dis.

STATE OF MISSOURI)
) SS. ORDER OF COMMITMENT
CITY OF ST. LOUIS)

THE STATE OF MISSOURI,

To Martin L. Tozer, Sheriff of the City of St. Louis, Missouri,

GREETING:

Whereas, on the 25th day of October, 1963, at the Circuit Court of the City of St. Louis, State of Missouri, Division No. 2, before The Honorable Michael J. Scott, the Judge thereof, James Peake, Jr. was convicted of contempt of court and sentenced to imprisonment in the City Jail of the City of St. Louis for the term of one year, and fined the sum of Five Hundred Dollars, and one-third of the costs of said action in that behalf accrued.

The particular circumstances of said offense are set forth as follows, as required by Section 476.140, of the Missouri Revised Statutes:

That on the 30th day of August, 1963, at 1:55P.M., in the Circuit Court of the City of St. Louis, Missouri, in Division Number Two thereof, in the case of Jefferson Bank and Trust Company, a corporation vs. Robert Curtis, William L. Clay, Charles R. Oldham, Marian Oldham, Lucien Richards, Richard Daly, Walter Hays, Rev. Charles Perkins, Norman Seay, Herman Thompson, Melvin West, individually and as representatives of a class known as St. Louis Committee of Racial Equality, Cause No. 57945, the following Temporary Restraining Order was made and entered by the Court aforesaid.

> " Temporary Restraining Order ordered to issue as to all defendants individually and as representatives of a class known as St. Louis Committee of Racial Equality from:

P 9c

"(a) Physically hindering, obstructing, interfering with, delaying, molesting or harassing other persons desiring to enter plaintiff's banking premises, from entering said premises for the purpose of conducting their business with plaintiff or for any other purpose.

"(b) Congregating or loitering individually or in groups inside plaintiff's banking premises and therein engage in any acts or conduct of whatsoever character which interfere with, intimidates, harasses, hinders and annoys plaintiff's employees in the performance of their duties or other persons in the conduct of their business with plaintiff or which in any way interferes with the proper and normal conduct of plaintiff's banking business.

"(c) Physically hindering, obstructing, interfering with, intimidating or in any other manner preventing customers of plaintiff and other members of the public from having the usual and customary access to tellers' windows located in plaintiff's banking premises or access to any other department or portions of said banking premises wherein plaintiff conducts its banking business.

"IT IS FURTHER ORDERED that, until the hearing of said motion and order therein, the defendants do absolutely desist and refrain from:

"(a) Physically hindering, obstructing, interfering with, delaying, molesting or harassing other persons desiring to enter plaintiff's banking premises, from entering said premises for the purpose of conducting their business with plaintiff or for any other purpose.

"(b) Congregating or loitering individually or in groups inside plaintiff's banking premises and therein engage in any acts or conduct of whatsoever character which interferes with, intimidates, harasses, hinders and annoys plaintiff's employees in the performance of their duties or other persons in the conduct of their business with plaintiff or which in any way interferes with the proper and normal conduct of plaintiff's banking business.

"(c) Physically hindering, obstructing, interfering with, intimidating or in any other manner preventing customers of plaintiff and other members of the public from having the usual and customary access to tellers' windows located in plaintiff's banking premises or access to any other department or portion of said banking premises wherein plaintiff conducts its banking business.

"IT IS FURTHER ORDERED THAT PLAINTIFF post bond in the sum of Ten Thousand Dollars ($10,000.00)

"Defendants ordered to show cause in Division 2 of the Circuit Court of the City of St. Louis, Missouri, on Thursday, September 26, 1963, at ten o'clock A.M. why a Temporary injunction should not be granted as prayed."

/S/ MICHAEL J. SCOTT
August 30, 1963 1:55 P.M."

That on the 7th day of October, 1963, said Temporary Restraining Order was in full force and effect; that said James Peake Jr. had actual notice and knowledge of said Restraining Order.

That the said James Peake Jr., with full notice and knowledge as aforesaid, did willfully disobey and violate said Temporary Restraining Order by:

1) Harrassing plaintiff and hindering and interfering with the proper and normal conduct of plaintiff's business by entering said bank for the purpose of making change which purpose was solely to harass plaintiff and interfere with the normal conduct of its business.

2) Refusing to leave plaintiff's banking premises after having been requested to do so and by so refusing to harass plaintiff and interfere with the normal conduct of plaintiff's business.

That the aforesaid acts and conduct constitute offenses against the majesty of the law and the dignity and authority of this Court;

That the said James Peake, Jr.. willfully disobeyed said Temporary Restraining Order.

You are therefore commanded to take the body of said James Peake, Jr., in your custody and convey said James Peake, Jr., to the City Jail of the City of St. Louis, and the

Warden thereof is hereby commanded to receive said defendant, and there keep said James Peake, Jr., for the said term of one year, or until the judgment and sentence of the Court herein are complied with, and all costs paid, or until the said James Peake, Jr. shall be otherwise discharged by due course of law.

And you are further commanded to make return of this writ, how you execute the same, and herein fail not at your peril.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at office, in the City of St. Louis, Missouri, this 25 day of October, 1963.

PHELIM O'TOOLE Clerk.

By Ferd L. Kaufmann
Deputy Div 2.

Div. No. 2

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS, STATE OF MISSOURI

IN RE ROBERT B. CURTIS

CONTEMPT OF COURT
DIVISION NO. 2

FINDINGS OF FACT AND JUDGMENT

It is hereby found that on August 30, 1963, at 1:55 P.M., in the Circuit Court of the City of St. Louis, Missouri, in Division Number Two thereof, in the case of Jefferson Bank and Trust Company, a corporation vs. Robert Curtis, William L. Clay, Charles R. Oldham, Marian Oldham, Lucien Richards, Richard Daly, Walter Hays, Rev. Charles Perkins, Norman Seay, Herman Thompson, Melvin West, individually and as representatives of a class known as St. Louis Committee of Racial Equality, Cause No. 57945, the following Temporary Restraining Order was made and entered by the Court aforesaid.

> "Temporary restraining order ordered to issue as to all defendants individually and as representatives of a class known as St. Louis Committee of Racial Equality from:
>
> "(a) Physically hindering, obstructing, interfering with, delaying, molesting or harassing other persons desiring to enter plaintiff's banking premises, from entering said premises for the purpose of conducting their business with plaintiff or for any other purpose.
>
> "(b) Congregating or loitering individually or in groups inside plaintiff's banking premises and therein engage in any acts or conduct of whatsoever character which interferes with, intimidates, harasses, hinders and annoys plaintiff's employees in the performance of their duties or other persons in the conduct of their business with plaintiff or which in any way interferes with the proper and normal conduct of plaintiff's banking business.
>
> "(c) Physically hindering, obstructing, interfering with, intimidating or in any other manner preventing customers of plaintiff and other members of the public from having the usual and customary access to tellers' windows located in plaintiff's banking premises or access to any other department or portion of said banking premises wherein plaintiff conducts its banking business.

P-10-A

"IT IS FURTHER ORDERED that, until the hearing of said motion and order therein, the defendants do absolutely desist and refrain from:

"(a) Physically hindering, obstructing, interfering with, delaying, molesting or harassing other persons desiring to enter plaintiff's banking premises, from entering said premises for the purpose of conducting their business with plaintiff or for any other purpose.

"(b) Congregating or loitering individually or in groups inside plaintiff's banking premises and therein engage in any acts or conduct of whatsoever character which interferes with, intimidates, harasses, hinders and annoys plaintiff's employees in the performance of their duties or other persons in the conduct of their business with plaintiff or which in any way interferes with the proper and normal conduct of plaintiff's banking business.

"(c) Physically hindering, obstructing, interfering with, intimidating or in any other manner preventing customers of plaintiff and other members of the public from having the usual and customary access to tellers' windows located in plaintiff's banking premises or access to any other department or portion of said banking premises wherein plaintiff conducts its banking business.

"IT IS FURTHER ORDERED THAT PLAINTIFF post bond in the sum of Ten Thousand Dollars ($10,000.00).

"Defendants ordered to show cause in Division 2 of the Circuit Court of the City of St. Louis, Missouri, on Thursday, September 26, 1963, at ten o'clock A.M. why a temporary injunction should not be granted as prayed."

/S/ MICHAEL J. SCOTT
August 30, 1963 1:55 P.M."

It is further found that the Temporary Restraining Order aforesaid was in full force and effect from August 30, 1963 through the present date of these proceedings.

It is further found that this cause came on on the 31st day of August, 1963, on verified application for contempt citation pursuant to Rule 92.15, Supreme Court rules; and Attachment thereupon issued to Martin L. Tozer, Sheriff of the City of St. Louis,

commanding the attachment of Robert B. Curtis, said Attachment was returned executed, and said Robert B. Curtis was committed to the City Jail until bond was given in the amount of $10,000; that Robert B. Curtis declined to furnish bond and remained in custody until September 3, 1963, when he was ordered discharged from custody by the St. Louis Court of Appeals, pursuant to Writ of Habeas Corpus, filed by him and on his behalf; that hearing pursuant to the application for contempt citation was originally scheduled to commence at 10:00 A.M. on Tuesday, September 3, 1963, but was postponed to September 4, 1963, due to the Court of Appeals hearing; that on September 4, 1963, prior to the hour set for the hearing, an application for a Writ of Prohibition was filed in the St. Louis Court of Appeals by and on his behalf; that said Court denied the application for the Writ of Prohibition in the afternoon of September 4, 1963 and that at that time, the hearing was continued until September 9, 1963; that on September 9, 1963 the hearing was again continued until September 23, 1963; that subsequent to September 9, 1963, and prior to September 23, 1963, Robert B. Curtis was served by said Sheriff with written notice pursuant to Rule 35.01 to show cause why he should not be punished as for criminal contempt, said notice having been applied for by Wayne L. Millsap pursuant to appointment by this Court for that purpose and setting forth in detail the essential facts constituting the criminal contempt charged, being signed by me and being returnable at 10:00 A.M. on September 23, 1963, in Division No. 2 of the Circuit Court of the City of St. Louis, thereby allowing him a reasonable time for the preparation of his defense.

It is further found that the hearing pursuant to the said Notice was commenced on September 23, 1963, and continued from day

to day and evidence adduced; the defendant, Robert B. Curtis appeared, was represented by counsel, had full opportunity to defend this action and presented testimony and evidence.

It is further found that defendant Robert B. Curtis, was served with a copy of the Temporary Restraining Order on the afternoon of Friday, August 30, 1963, prior to the time when the demonstrators took any steps to stand in front of the bank doors or to enter into the bank premises.

It is further found that Robert B. Curtis was represented by Attorney Raymond Howard on Friday morning, August 30, 1963, at a hearing held prior to the issuance of a temporary restraining order, and that at approximately 1:55 P.M. on Friday, August 30, 1963, the temporary restraining order aforesaid was issued by this court and personally delivered to Attorney Raymond Howard, who was then and there representing defendant, Robert B. Curtis.

It is further found that defendant Robert B. Curtis, in addition to being served with a copy of the restraining order and injunction petition, received notice of the same at a meeting attended by him and various other demonstrators on a parking lot adjacent to the scene of the demonstration at approximately 5:00 P.M. on August 30, 1963, at which time his attorney, Raymond Howard, informed him and others of the content of the restraining order and advised compliance therewith.

It is further found that defendant, Robert B. Curtis, with full knowledge and notice, as aforesaid, and acting in concert and participation with and aiding and abetting one or more of the persons named as defendants in the aforementioned Jefferson Bank and Trust Company vs. Robert Curtis, et al., did willfully disobey and violate said restraining order by:

1) Conspiring with others to violate said Restraining Order by appearing on the 30th day of August, 1963, at the Jefferson Bank and Trust Company, 2600 Washington Avenue, St. Louis, Mo., with a crowd of more than one hundred persons, including children, and then and there singing, chanting, parading, shouting, and milling about in and around said Bank premises, and causing others to do so; conspiring with others to cause said crowd, or part of them, to lock arms in front of the entrance to the Bank premises so as to bar entry to and exit from said Bank; conspiring with others to cause said crowd, or part of them, to enter said Bank and sit in, lie in and otherwise obstruct the lobby of said Bank so that customers were prevented, hindered and delayed from having access to tellers' windows and otherwise transacting their lawful business; conspiring with others to cause said crowd of persons, or part of them, to congregate individually and in groups unlawfully inside said Bank.

2) So directing, controlling, supervising and planning, while said Restraining Order was in force, as a representative of the St. Louis Committee of Racial Equality with the right to direct, control, supervise and plan the activities of said Committee, as to violate said Restraining Order by causing members of said Committee and others: to sing, parade, chant, mill about and congregate in and around said Bank; to enter said Bank and sit in, lie in, and otherwise obstruct the lobby of the Bank, preventing, hindering, and delaying customers from access to tellers' windows and other portions of the premises; to bar entry to and exit from said Bank by locking arms in front of the entrance; and to congregate and loiter individually and in groups unlawfully inside said Bank.

3) Failing, while said Restraining Order was in force, as a representative of the Committee aforesaid, with the right to direct, control, supervise and plan the activities of said Committee and its members, and knowing that members of said Committee were violating said Restraining Order, to so direct, control and supervise said activities as to cause said violation to cease and desist.

4) Aiding, abetting and counselling others to violate said Restraining Order by engaging and participating in the conduct aforesaid.

It is further found, adjudged and decreed that the aforesaid acts and conduct constitute offenses against the majesty of the law and the dignity and authority of this Court.

It is further found, adjudged and decreed that defendant, Robert B. Curtis, is guilty of willful disobedience of said Temporary Restraining Order, and is punishable as for criminal contempt.

It is adjudged and decreed that defendant Robert B. Curtis be confined to the City Jail of the City of St. Louis for the period of two hundred seventy days (270), and pay a fine to the St. Louis Circuit Clerk of Criminal Causes in the sum of One Thousand ($1,000) Dollars, and pay one-ninth (1/9) of the costs of this action, and that Martin L. Tozer, the Sheriff of the City of St. Louis, shall, without delay, remove and safely convey the said defendant, Robert B. Curtis, to the City Jail of the City of St. Louis, there to be kept, confined and treated in the manner directed by law, and the Warden of said City Jail of the City of St. Louis is required to receive and safely keep him, the said defendant, in the City Jail of the City of St. Louis aforesaid, until the judgment and sentence of the Court herein are complied with and all costs paid or until the said defendant shall be otherwise discharged by due course of law.

Michael J. Scott

Michael J. Scott
CIRCUIT COURT JUDGE

Date 10/24/63

Dw 2.

STATE OF MISSOURI }
CITY OF ST. LOUIS } SS

ORDER OF COMMITMENT

THE STATE OF MISSOURI,

To Martin L. Tozer, Sheriff of the City of St. Louis, Missouri, GREETING:

Whereas, on the 24th day of October, 1963, at the Circuit Court of the City of St. Louis, State of Missouri, Division No. 2, before The Honorable Michael J. Scott, the Judge thereof, Norman Seay was convicted of contempt of court and sentenced to imprisonment in the City Jail of the City of St. Louis for the term of ninety days (90) and fined the sum of Five Hundred ($500) Dollars, and one-ninth (1/9) of the costs of said action in that behalf accrued.

The particular circumstances of said offense are set forth as follows, as required by Section 476.140, of the Missouri Revised Statutes:

That on the 30th day of August, 1963, at 1:55 P.M., in the Circuit Court of the City of St. Louis, Missouri, in Division Number Two thereof, in the case of Jefferson Bank and Trust Company, a corporation vs. Robert Curtis, William L. Clay, Charles R. Oldham, Marian Oldham, Lucien Richards, Richard Daly, Walter Hays, Rev. Charles Perkins, Norman Seay, Herman Thompson, Melvin West, individually and as representatives of a class known as St. Louis Committee of Racial Equality, Cause No. 57945, the following Temporary Restraining Order was made and entered by the Court aforesaid.

> "Temporary restraining order ordered to issue as to all defendants individually and as representatives of a class known as St. Louis Committee of Racial Equality from:
>
> "(a) Physically hindering, obstructing, interfering with, delaying, molesting or harassing other persons desiring to enter plaintiff's banking premises, from entering said premises for the purpose of conducting their business with plaintiff or for any other purpose.

P. 11-B

"(b) Congregating or loitering individually or in groups inside plaintiff's banking premises and therein engage in any acts or conduct of whatsoever character which interferes with, intimidates, harasses, hinders and annoys plaintiff's employees in the performance of their duties or other persons in the conduct of their business with plaintiff or which in any way interferes with the proper and normal conduct of plaintiff's banking business.

"(c) Physically hindering, obstructing, interfering with, intimidating or in any other manner preventing customers of plaintiff and other members of the public from having the usual and customary access to tellers' windows located in plaintiff's banking premises or access to any other department or portion of said banking premises wherein plaintiff conducts its banking business.

"IT IS FURTHER ORDERED that, until the hearing of said motion and order therein, the defendants do absolutely desist and refrain from:

"(a) Physically hindering, obstructing, interfering with, delaying, molesting or harassing other persons desiring to enter plaintiff's banking premises, from entering said premises for the purpose of conducting their business with plaintiff or for any other purpose.

"(b) Congregating or loitering individually or in groups inside plaintiff's banking premises and therein engage in any acts or conduct of whatsoever character which interferes with, intimidates, harasses, hinders and annoys plaintiff's employees in the performance of their duties or other persons in the conduct of their business with plaintiff or which in any way interferes with the proper and normal conduct of plaintiff's banking business.

"(c) Physically hindering, obstructing, interfering with, intimidating or in any other manner preventing customers of plaintiff and other members of the public from having the usual and customary access to tellers' windows located in plaintiff's banking premises or access to any other department or portion of said banking premises wherein plaintiff conducts its banking business.

"IT IS FURTHER ORDERED THAT PLAINTIFF post bond in the sum of Ten Thousand Dollars ($10,000.00).

"Defendants ordered to show cause in Division 2 of the Circuit Court of the City of St. Louis, Missouri, on Thursday, September 26, 1963, at ten o'clock A.M. why a temporary injunction should not be granted as prayed."

/S/ MICHAEL J. SCOTT
August 30, 1963 1:55 P.M."

That on the 30th day of August, 1963, said Temporary Restraining Order was in full force and effect; that said Norman Seay had actual notice and full knowledge of said Restraining Order.

That the defendant, Norman Seay, with full notice and knowledge as aforesaid, did willfully disobey and violate said Temporary Restraining Order by:

1) Conspiring with others to violate said Restraining Order by appearing on the 30th day of August, 1963, at the Jefferson Bank and Trust Company, 2600 Washington Avenue, St. Louis, Mo., with a crowd of more than one hundred persons, including children, and then and there singing, chanting, parading, shouting, and milling about in and around said Bank premises, and causing others to do so; conspiring with others to cause said crowd, or part of them, to lock arms in front of the entrance to the Bank premises so as to bar entry to and exit from said Bank; conspiring with others to cause said crowd, or part of them, to enter said Bank and sit in, lie in and otherwise obstruct the lobby of said Bank so that customers were prevented, hindered and delayed from having access to tellers' windows and otherwise transacting their lawful business; conspiring with others to cause said crowd of persons, or part of them, to congregate individually and in groups unlawfully inside said Bank.

2) So directing, controlling, supervising and planning, while said Restraining Order was in force, as a representative of the St. Louis Committee of Racial Equality with the right to direct, control, supervise and plan the activities of said Committee, as to violate said Restraining Order by causing members of said Committee and others: to sing, parade, chant, mill about and congregate in and around said Bank; to enter said Bank and sit in, lie in, and otherwise obstruct the lobby of the Bank, preventing, hindering, and delaying customers from access to

tellers' windows and other portions of the premises; to bar entry to and exit from said Bank by locking arms in front of the entrance; and to congregate and loiter individually and in groups unlawfully inside said Bank.

3) Failing, while said Restraining Order was in force, as a representative of the Committee aforesaid, with the right to direct, control, supervise and plan the activities of said Committee and its members, and knowing that members of said Committee were violating said Restraining Order, to so direct, control and supervise said activities as to cause said violation to cease and desist.

4) Aiding, abetting and counselling others to violate said Restraining Order by engaging and participating in the conduct aforesaid.

That the aforesaid acts and conduct constitute offenses against the majesty of the law and the dignity and authority of this Court;

That the defendant, Norman Seay, willfully disobeyed said Temporary Restraining Order.

You are therefore commanded to take the body of said defendant, Norman Seay, in your custody and convey said Norman Seay, to the City Jail of the City of St. Louis, and the Warden thereof is hereby commanded to receive said defendant, and there keep said Norman Seay for the said term of Ninety (90) days, or until the judgment and sentence of the Court herein are complied with, and all costs paid, or until the said defendant shall be otherwise discharged by due course of law.

And you are further commanded to make return of this writ, how you execute the same, and herein fail not at your peril.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at office, in the City of St. Louis, Missouri, this 14 day of October 1963.

Div. No.2

PHELIM O'TOOLE

By: Fred J. McKaulonge

IN THE SUPREME COURT OF THE STATE OF MISSOURI

In the Matter of:	)	
	)	
ROBERT B. CURTIS, WILLIAM L. CLAY, LUCIEN RICHARDS, REV. CHARLES PERKINS, and NORMAN SEAY,	)	
	)	
Petitioners	)	
	)	
Versus	)	No. _____
	)	
MARTIN L. TOZER, Sheriff of the City of St. Louis, and WILLIAM BOEGER, Warden of the Municipal Jail, City of St. Louis,	)	
	)	
Respondents	)	

APPLICATION FOR WRIT OF HABEAS CORPUS

Your Petitioners, Robert B. Curtis, William L. Clay, Lucien Richards, Rev. Charles Perkins, and Norman Seay, respectfully represent that they are unlawfully restrained of their liberty by MARTIN L. TOZER, Sheriff of the City of St. Louis, and WILLIAM BOEGER, Warden of the City Jail of the City of St. Louis, pursuant to a Judgment and Order of Commitment of the Honorable Michael J. Scott, Judge, Division 2, St. Louis Circuit Court, Rendered in Cause No. 57945 E, on the twenty-fourth day of October, 1963; that said imprisonment, detention and confinements are illegal in the following respects to-wit:

I

The court lacked jurisdiction to try these Petitioners for criminal contempt for the following reasons, to-wit:

1. The violation if any of the Court's restraining order by these alleged contemnors was a civil and not a criminal contempt. These proceedings were instituted and conducted, not by or in the name of the State as an independent action for an affront to the dignity of the court, but by the plaintiff Jefferson Bank & Trust Company as an auxiliary proceeding to its

main suit to protect its property from continuing trespasses and to save itself from irreparable injury. It was based upon its application for a citation and its counsel presented the evidence in support of it. (See Ex. P-6)

2. The subsequent service upon these Petitioners of the Notices or Citations of September 11 and September 18, 1963, (some 18 days after the trial had started) by which the Court tried and convicted these Petitioners for a criminal contempt was a denial of due process of law and equal protection of the law, in that the contempt punishment statute, RS Mo. 1959, Section 476.110, does not convert a civil contempt into a criminal contempt by authorizing punishment "as for criminal contempt" in that criminal contempt constitutes a final judgment denying to petitioners the right of appeal, and the right to bail. (See Ex. P-8 and P-9)

II

That the trial court lacked jurisdiction to render that particular judgments in this cause, and to make its findings of fact and judgments as to each of these petitioners because the evidence does not support a finding that each petitioner is guilty beyond a reasonable doubt of any of the specifications found in the judgment entered against him and for the further reasons that:

(1) There is no evidence that any of these petitioners made any statement or engaged in any conduct defaming or in derogation of the Court, its order or the Judge thereof, or encouraged others to do so.

(2) The only evidence against the petitioner William Clay came from a single witness, a police officer, who stated that he observed Clay motioning to the demonstrators to enter the

bank. This lone witness was contradicted by all of the other witnesses for the bank and witnesses for Petitioner, none of whom saw any such action by petitioner Clay.

3 The only evidence against petitioner Norman Seay is that of a single police officer some 25 to 30 feet away, who alleged that he heard a statement by Norman Seay urging the demonstrators to change their position so as to impede entrance into the bank. This evidence is not sufficient to determine guilt beyond a reasonable doubt.

4 The only evidence against petitioner Perkins is that he waved his hands in such a manner as to indicate to one witness that Perkins was directing the singers. There was ample testimony that Perkins entered that bank and protested the violent action of thesheriff's deputies when they knocked children to the ground by forcibly opening the door of the bank, but there was absolutely no testimony that Perkins violated any of the Court's orders or interfered in any way with the operation of the bank's business.

5 None of the evidence against petitioner Robert Curtis indicates that he individually did anything that was in violation of the Court's order or that he encouraged any other person to so violate the order. In fact, the evidence clearly shows that Curtis encouraged obedience to the Court's order when he introduced Atty. Raymond Howard who then urged compliance, and as a ruse to get the demonstrators out of the bank asked said demonstrators to leave and attend a CORE meeting.

6 All the evidence against petitioner Lucien Richards indicated that he did nothing to encourage disparagement of the Court or its dignity, and did nothing to interfere with the business of the bank.

III

The Court lacked jurisdiction to render the particular judgments of contempt against these petitioners in that the Injunction Bond (Ex. P-5) is not responsive to the Application for Injunction (Ex. P-3) and the Temporary Restraining Order (Ex. P-4).

1. The bond is statutorily deficient in that it does not purport to indemnify all defendants named in the suit, namely the class, and the judgments of contempt and imprisonment are therefore void as a matter of law.

2. The Court cannot enlarge the Indemnity Agreement which is in the nature of a Third Party Beneficiary contract between the bonding company and plaintiff bank to include persons not contracted for by them solely for the purpose of thrusting jurisdiction upon the Court, and the judgments of contempt are therefore void as a matter of law.

IV

THE ENTIRE PROCEEDINGS AND TRIAL CONSTITUTE A DENIAL TO THESE PETITIONERS OF DUE PROCESS AND EQUAL PROTECTION OF THE LAWS AS GUARANTEED TO THEM BY THE CONSTITUTION OF THE U. S. AND THE 14TH AMENDMENT THEREOF, THE 6 AND 8TH AMENDMENTS THEREOF, AND THE CONSTITUTION OF THE STATE OF MISSOURI - ARTICLES I, AND SECTIONS 10 AND 18A, THEREOF

The said violations have been, among others, as follows:

1 The petitioners - Curtis, Clay, Richards, Perkins and Seay were arrested and attached late on a Saturday night August 31, 1963, prior to Labor Day and held until Tuesday September 3, 1963, without an opportunity to be taken before a Court "forthwith"; the hearing for issuance of attachments was held at night, and without notice to them.

2. Upon being brought into Court on Tuesday, September 3, 1963, they were denied release, and remanded to custody.

3 On September 3, 1963, Petitioners were given 30

minutes to prepare for trial.

4 It was necessary to file habeas corpus proceedings in the Saint Louis Court of Appeals to get release from custody pending a hearing or trial.

5 The petitioners were required by the trial Court to post exorbitant bail prior to trial, in the sum of $10,000.00 each.

6 These petitioners were held for trial from the time of their arrest and attachment on Saturday night August 31, 1963, until September 18, 1963, or thereabout, before any valid citation for contempt was filed against them.

7 These petitioners were required to proceed to trial on September 23, 1963, only 5 days after the citation containing charges was filed against them.

8. The application and notice for citation was for Civil Contempt but the petitioners were tried for criminal contempt.

9. After the depositions of the petitioners were taken under the provision of the rules of civil procedure, the proceedings against petitioners were changed from civil contempt to criminal contempt.

10 In violation of the rules relating to exclusion of witnesses, the trial Court permitted persons who had remained in the Court to be called as witnesses for plaintiff over objection of petitioner's counsel.

11 The Trial Court permitted the attorney for the plaintiff Bank who had secured the restraining order, and who was personally interested in the outcome of the litigation, to be appointed special prosecutor to present the evidence in the proceedings; and said appointment was not made or desig-

nated until after depositions of petitioners were taken, and after the proceedings were in process as Civil Contempt for 18 days.

12 The special prosecutor interviewed a 16 year old member of the defendant class and promised her and her brother immunity if she would testify on behalf of the plaintiff bank, and he threatened to put her in prison and to extradite her brother from Wisconsin if she did not so testify.

13 After the trial, the Trial Court imposed excessive fines from 500 to 1000 dollars and jail sentences from 60 days to 9 months. (See Ex. P-11 (a-e).

14 After the trial, the Court found the petitioners guilty of Criminal Contempt, and denied them bail pending a motion for a re-hearing or pending appeal, and said Court denied them the right to appeal.

V

The Trial Court lacked jurisdiction to issue its Restraining Order in that, to wit:

1. A labor dispute existed within the meaning and interpretation of the applicable Federal statutes and decisions relating to labor relations involving businesses engaged in Interstate Commerce.

2. The Federal Government has pre-empted the field of labor disputes.

3. This case does not come within any of the exceptions to this rule which would confer jurisdiction upon the state courts.

4. The state court is without authority to enforce the racial discriminatory policy of any person or persons or of any private or public agency.

VI

The Court exceeded its jurisdiction in rendering the particular judgments in that the fines and sentences are excessive and therefore constitute cruel and unusual punishment contrary to the Eighth Amendment to the United States Constitution and Article I Section 21 of the Missouri Consttitution.

VII

The Court exceeded its jurisdiction to try these petitioners for an alleged criminal contempt in that, to wit:

1. The Trial Court violated the law and public policy of the State of Missouri as expressed in the Constitution of Missouri Article I, Section 10, the R.S. Mo. 1959, Section 56.110 and the decisions of the Appellate Court by appointing an interested party to prosecute an alleged criminal contempt proceeding.

2. The Court overruled petitioners' motion to remove the prosecutor and appoint a disinterested prosecutor after a showing of improper conduct by the interested prosecutor.

VIII

The Court lacked jurisdiction to render the particular judgments committing these defendants to jail and assessing the fines against them in that, to wit:

1. The Findings of Fact and Judgments for each defendant is a mere statement of conclusions by the Court and hence is insufficient as a matter of law to support the judgment of the Court based thereon as being contrary to the statutes and decisional law of Missouri.

2. The Commitment Order for each Petitioner is a mere statement of conclusions by the Court and hence is insufficient as a matter of law to support the judgment of imprisonment by

the Court based thereon as being contrary to the statute and decisional law of Missouri.

3. The Commitment Order of each Petitioner is a variance from the Findings of Fact and Judgment by the Court in that the Commitment Orders purport to commit to jail for an offense different in substance from the offense for which each petitioner was allegedly charged and found guilty, and therefore is void as a matter of law to support the imprisonment based thereon.

IX

Petitioners state that Sections 476.110 and 526.220, RS Mo., 1959, and Supreme Court Rule 35.01, under which the contempt proceedings were initiated against them are unconstitutional and void, and by reason thereof the judgments and orders of commitment are void, in that:

1 Said statutes and rule are so vague, indefinite, and ambiguous that a person charged under them cannot determine what the nature of the charge is against him, what the proper procedure should be or what his rights are thereunder.

2 Said statutes and rule are so vague, indefinite and ambiguous that the state courts' application of them and the decisions as to proper procedure or meaning thereunder are in conflict.

3 Said statutes and rule, even if they are deemed to be constitutional, are unconstitutional as they have been applied to these petitioners in this instance, in that their rights to know the nature of the charge against them and to due process and equal protection of the law under Articles VI and XIV of the Constitution of the United States and Article I, Sections 10 and 18a of the Constitution of the State of Missouri, have been denied.

Petitioners further state that no application for this particular relief sought has been made to or refused by any Court, Officer or Officers superior to the one to whom this Petition is presented.

WHEREFORE, Your Petitioners pray that a Writ of Habeas Corpus issue as to each of the Alleged Contemnors, that they be discharged from their unlawful imprisonment, or that the Alleged Contemnors be admitted to bail pending a hearing of this Proceeding on its merits and the Discharge of these Defendants.

Robert B. Curtis

William L. Clay

Lucien Richards

Rev. Charles Perkins

Norman Seay

PETITIONERS

R. L. Witherspoon

Joseph S. McDuffie

Robert E. Wilson, Jr.

Attorneys for Petitioners

STATE OF MISSOURI)
) SS
CITY OF ST. LOUIS)

The affiants, Robert B. Curtis, William L. Clay, Lucien Richards, Rev. Charles Perkins, and Norman Seay, petitioners in the above and foregoing application for Writ of Habeas Corpus make oath and say that the facts and allegations stated in the above and foregoing application are true according to their best knowledge, information and belief.

_____
Robert B. Curtis

_____
William L. Clay

_____
Lucien Richards

_____
Rev. Charles Perkins

_____
Norman Seay

Subscribed and sworn to before me this _____ day of _____, 19___.

_____
Notary Public within and for the City of St. Louis, State of Missouri.

My Commission expires_____.

FIRST FIVE

INDEX TO EXHIBITS

P - 1 Letter of August 14, 1963. Robert Curtis to Jefferson Bank and Trust Co.

P - 2 Letter of August 27, 1963. Wayne Millsap to Robert Curtis

P - 3 Petition for Injunction and Restraining Order

P - 4 Restraining Order

P - 5 Indemnity Bond

P - 6 Application for Citation

P - 7 Attachment

P - 8 Notice of September 11, 1963

P - 9 Notice of September 18, 1963

P - 10a Findings of Fact & Judgment, Robert B. Curtis
b Norman R. Seay
c Rev. Charles Perkins
d Lucien Richards
e William L. Clay

P - 11a Committment Order, Robert B. Curtis
b Norman R. Seay
c Rev. Charles Perkins
d Lucien Richards
e William L. Clay

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In the Matter of the Petition of ROBERT B. CURTIS, WILLIAM L. CLAY, LUCIEN RICHARDS, REV. CHARLES PERKINS and NORMAN SEAY	)	No. 64 C 52 (3)
	)	Habeas Corpus

APPLICATION FOR ADMISSION TO BAIL

Come now Robert. B. Curtis, William L. Clay, Lucien Richards, Rev. Charles Perkins and Norman Seay and make application for admission to bail and in support of such application state;

1. That petitioners are presently within the jurisdiction of this court by virtue of an application for writ of habeas corpus heretofore filed in this cause, and by this reference made a part of this application, and by reason of the order of this court dated February 11, 1964 wherein this court, "Ordered that the petitioners remain in custody and within the jurisdiction of the Court until it is further ordered herein".

2. Nineteen persons, including these petitioners, were adjudged guilty of criminal contempt in a proceeding in Division 2 of the Circuit Court of the City of St. Louis, State of Missouri and on October 24th and 25th, 1963, the nineteen were committed to the City Jail of St. Louis, Missouri. An application for Writ of Habeas Corpus was filed in the St. Louis Court of Appeals and on Friday, November 1, 1963 all were admitted to bail and required to appear on January 15, 1964 for further orders of the Court. On January 15, 1964 four of the original alleged contemnors were released by decision of the St. Louis Court of Appeals, the remaining fifteen, including these petitioners were remanded to the City Jail.

3. Under the terms of the Judgment petitioners were sentenced to serve definite terms and to pay fines from $500.00 to $1,000.00 and pay one ninth (1/9) of the costs and committed until the judgment and sentence of the court are complied with and all costs paid, or until the petitioners shall be otherwise discharged by due course of law. The fines and sentences imposed were as follows:

Name	Length of Sentence	Fine
Robert Curtis	270 days	$1,000.00
William L. Clay	270 days	1,000.00
Rev. Charles Perkins	Six months	500.00
Lucien Richards	90 days	500.00
Norman Seay	90 days	500.00

4. That as of Thursday, February 20, 1964 petitioners will have served forty four days (44) of their sentence and unless they are admitted to bail the issues and questions presented in their petition for habeas corpus will become moot, particularly this is true for petitioners Seay and Richards.

5. Substantial questions of law have been presented to this court concerning the jurisdiction of the trial court to proceed in the first instance and of its jurisdiction to impose said fines and sentences because of the denial of due process, equal protection of the laws and other Federal Constitutional rights.

6. If it is determined that petitioners' detention is wrongful and in violation of their constitutional rights, petitioners will have served substantial portions of their sentences with no adequate redress for having been detained and deprived of their liberty.

7. Petitioners herein have and enjoy among their friends and associates in the community a reputation for honesty and integrity and if admitted to bail on their own recognizance will submit themselves to the orders and further process of this court.

8. The granting of bail pending a hearing and decision will not in any manner prejudice the rights of the detaining authority or of any agency of the confining state.

WHEREFORE, petitioners pray, that, pending a hearing and decision on their application for a writ of habeas corpus they be admitted to bail on their own recognizance or in such sum as the court may determine.

Robert B. Curtis

William L. Clay

Lucien Richards

Rev. Charles Perkins

Norman Seay

Attorneys for Petitioners

Clyde S. Cahill
1204 Franklin
CH 1-5939

Joseph S. McDuffie
2847 Union
CO 1-4230

Robert E. Wilson, Jr.
4332a Easton
OL 2-3284

of Counsel

Robert L. Witherspoon
Charles R. Oldham
Emanuel Williams
Wyvetter Young
Margaret B. Wilson
Robert Raterman

STATE OF MISSOURI)
) SS
CITY OF ST. LOUIS)

The Affiants, Robert B. Curtis, William L. Clay, Lucien Richards, Rev. Charles Perkins and Norman Seay, Petitioners in the above and foregoing Application for Bail make oath and say that the facts and allegations stated in the above and foregoing Application are true according to their best knowledge, information and belief.

_____
Robert B. Curtis

_____
William L. Clay

_____
Lucien Richards

_____
Rev. Charles Perkins

_____
Norman Seay

Subscribed and sworn to before me this_____day of _____, 19___.

_____
Notary Public within and for the City of St. Louis, State of Missouri.

My Commission expires:

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In the Matter of the Petition of LOUIS FORD, IAN GRAND, BENJAMIN GOINS, ROBERTA TOURNOUR, TAYLOR JONES KENNETH LEE and RONALD GLENN	)	No. 64 C 53 (2)
	)	Habeas Corpus

APPLICATION FOR ADMISSION TO BAIL

Come now Louis Ford, Ian Grand, Benjamin Goins, Roberta Tournour, Taylor Jones, Kenneth Lee and Ronald Glenn and make application for admission to bail and in support of such application state:

1. That petitioners are presently within the jurisdiction of this court by virtue of an application for writ of habeas corpus heretofore filed in this cause, and by this reference made a part of this application, and by reason of the order of this court dated February 11, 1964 wherein this court, "Ordered that the petitioners remain in custody and within the jurisdiction of the Court until it is further ordered herein".

2. Nineteen persons, including these petitioners, were adjudged guilty of criminal contempt in a proceeding in Division 2 of the Circuit Court of the City of St. Louis, State of Missouri and on October 24th and 25th, 1963 the nineteen were committed to the City Jail of St. Louis, Missouri. An application for Writ of Habeas Corpus was filed in the St. Louis Court of Appeals and on Friday, November 1, 1963, all were admitted to bail and required to appear on January 15, 1964 for further orders of the Court. On January 15, 1964 four of the original alleged contemnors were released by decision of the St. Louis Court of Appeals, the remaining fifteen, including these petitioners were remanded to the City Jail.

3. Under the terms of the Judgment petitioners were sentenced to serve definite terms and to pay fines in the sum of $500.00 and pay one seventh (1/7) of the costs and committed until the judgment and sentence of the court are complied with and all costs paid, or until the petitioners shall be otherwise discharged by due course of law. The fines and sentences imposed were as follows:

Name	Length of Sentence	Fine
Louis Ford	1 year	$500.00
Ian Grand	180 days	500.00
Benjamin Goins	90 days	500.00
Roberta Tournour	120 days	500.00
Taylor Jones	1 year	500.00
Kenneth Lee	60 days	500.00
Ronald Glenn	60 days	500.00

4. On Thursday, February 20, 1964 petitioners will have served forty three (43) days of their sentence and unless they are admitted to bail the issues and questions presented in their petition for habeas corpus will become moot, particularly this is true for petitioners Tournour, Goins, Lee and Glenn.

5. Substantial questions of law have been presented in this court concerning the jurisdiction of the trial court to proceed in the first instance and of its jurisdiction to impose said fines and sentences because of the denial of due process, equal protection of the laws and other Federal Constitutional rights.

6. If it is determined that petitioners' detention is wrongful and in violation of their constitutional rights, petitioners will have served substantial portions of their sentences with no adequate redress for having been detained and deprived of their liberty.

7. Petitioners herein have and enjoy among their friends and associates in the community a reputation for honesty and integrity and if admitted to bail on their own recognizance will submit themselves to the orders and further process of this court.

8. The granting of bail pending a hearing and decision will not in any manner prejudice the rights of the detaining authority or of any agency of the confining state.

WHEREFORE, petitioners pray, that, pending a hearing and decision on their application for a writ of habeas corpus, they be admitted to bail on their own recognizance or in such sum as the court may determine.

Louis Ford

Ian Grand

Benjamin Goins

Roberta Tournour

Taylor Jones

Kenneth Lee

Ronald Glenn

of Counsel

Clyde S. Cahill
Margaret B. Wilson
Emanuel Williams
Robert Raterman
Wyvetter Young
Robert L. Witherspoon

Attorneys for Petitioners

Charles R. Oldham
722 Chestnut

Joseph McDuffie
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Robert E. Wilson
4332a Easton

STATE OF MISSOURI)
)SS
CITY OF ST. LOUIS)

- The Affiants, Louis Ford, Ian Grand, Benjamin Goins, Roberta Tournour, Taylor Jones, Kenneth Lee and Ronald Glenn, Petitioners in the above and foregoing Application for Bail make oath and say that the facts and allegations stated in the above and foregoing Application are t rue according to their best knowledge, information and b elief.

_____
Louis Ford

_____
Ian Grand

_____
Benjamin Goins

_____
Roberta Tournour

_____
Taylor Jones

_____
Kenneth Lee

_____
Ronald Glenn

Subscribed and sworn to before me this_____day of _____, 19___.

_____
Notary Public within and for the City of St. Louis, State of Missouri.

My Commission expires:

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

In the Matter of the Petition of MICHELA GRAND, DANIEL POLLOCK and JAMES PEAKE, JR.	))))	No. 64-C 54 (3) Habeas Corpus

APPLICATION FOR ADMISSION TO BAIL

Come now Michela Grand, Daniel Pollock and James Peake, Jr. and make application for admission to bail and in support of such application state;

1. That petitioners are presently within the jurisdiction of this court by virtue of an application for writ of habeas corpus heretofore filed in this cause, and by this reference made a part of this application, and by reason of the order of this court dated February 11, 1964 wherein this court, "Ordered that the petitioners remain in custody and within the jurisdiction of the Court until it is further ordered herein".

2. Nineteen persons, including these petitioners, were adjudged guilty of criminal contempt in a proceeding in Division 2 of the Circuit Court of the City of St. Louis, State of Missouri and on October 24th and 25th, 1963 the nineteen were committed to the City Jail of St. Louis, Missouri. An application for Writ of Habeas Corpus was filed in the St. Louis Court of Appeals and on Friday, November 1, 1963, all were admitted to bail and required to appear on January 15, 1964 for further orders of the Court. On January 15, 1964 four of the original alleged contemnors werereleased by decision of the St. Louis Court of Appeals, the remaining fifteen, including these petitioners were remanded to the City Jail.

3. Under the terms of the Judgment petitioners were sentenced to serve definite terms and to pay fines in the sum of $500.00 and pay one third (1/3) of the costs and committed until the judgment and sentence of the court are complied with and all costs paid, or until the petitioners shall be otherwise discharged by due course of law. The fines and sentences imposed were as follows:

Name	Length of Sentence	Fine
James Peake, Jr.	One year	$500.00
Michela Grand	120 days	500,00
Daniel Pollock	60 days	500.00

4. That as of Thursday, February 20, 1964 petitioners will have served forty three (43) days of their sentence and unless they are admitted to bail the issues and questions presented in their petition for habeas corpus may become moot, and particularly t is is true for petitioners Pollock and Grand.

5. Substantial questions of law have been presented to this court concerning the jurisdiction of the trial court to proceed in the first instance and of its jurisdiction to impose said fines and sentences because of the denial of due process, equal protection of the laws and other Federal Constitutional rights.

6. If it is determined that petitioners' detention is wrongful and in violation of their constitutional rights, petitioners will have served substantial portions of their sentences with no adequate redress for having been detained and deprived of their liberty.

7. That petitioners herein have and enjoy among their friends and associates in the community a reputation for honesty and integrity and if admitted to bail on their own recognizance will submit themselves to the orders and further process of this court.

8. The granting of bail pending a hearing and decision will not in any manner prejudice the rights of the detaining authority or of any agency of the confining state.

WHEREFORE, petitioners pray, that, pending a hearing and decision on their application for a writ of habeas corpus they be admitted to bail on their own recognizance or in such sum as the court may determine.

James Peake, Jr.

Michaela Grand

Daniel Pollock

Petitioners

Attorneys for Petitioners

Wyvetter Young
2847 Union Blvd.

Joseph McDuffie
2847 N. Union

Robert L. Witherspoon
1518 N. Sarah

Of Counsel:

Charles R. Oldham
Clyde S. Cahill
Emanuel Williams
Robert Ratermann
Robert E. Wilson, Jr.
Margaret B. Wilson

STATE OF MISSOURI)
) SS
CITY OF ST. LOUIS)

The Affiants, James Peake, Jr., Michaela Grand and Daniel Pollock, Petitioners in the above and foregoing Application for Bail make oath and say that the facts and allegations are true according to their best knowledge, information and belief.

_____
James Peake, Jr.

_____
Michaela Grand

_____
Daniel Pollock

Subscribed and sworn to before me this_____day of

_____, 19___.

_____
Notary Public within and for the City of St. Louis, State of Missouri.

My Commission expires:

STATE OF MISSOURI)
)
CITY OF ST. LOUIS)

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI

JEFFERSON BANK AND TRUST COMPANY, a corporation,

Plaintiff,

vs.

ROBERT CURTIS, et. al.

Defendant,

Cause No. 57945

Dvision No. 2

NOTICE TO ROBERT B. CURTIS

WHEREAS, on the ~~30th~~ 30TH day of August, 1963, the Circuit Court of the City of St. Louis, Division No. 2, issued a Restraining Order which provided that you, individually, and with others as representatives of a class, were restrained from:

(a) Physically hindering, obstructing, interfering with, delaying, , molesting or harrassing other persons desiring to enter plaintiff's banking premises, from entering said premises for the purpose of conducting their business with plaintiff or for any other purpose.

(b) Congregating or loitering individually or in groups inside plaintiff's banking premises and therein engage in any acts or conduct of whatsoever character which interferes with, intimidates, harrasses, hinders and annoys plaintiff's employes in the performance of their duties or other persons in the conduct of their business with plaintiff or which in any way interferes with the proper and normal conduct of palintiff's banking business.

(c) Physically hindering, obstructing, interfering with, intimidating or in any other manner preventing customers of plaintiff and other members of the public from having the usual and customary access to teller's windows located in plaintiff's banking premises or access to any other department or portion of said banking premises wherein plaintiff conducts its banking business.

P- 8.

You are hereby charged with willful disobedience of said Restraining Order, lawfully issued, in the following particulars, and with full knowledge and notice of said Restraining Order:

(1) That you, while said Restraining Order was in force, conspired with others to violate said Restraining Order by appearing on the 30th day of August, 1963, at the Jefferson Bank and Trust Company, 2600 Washington Avenue, St. Louis, Mo., with a crowd of more than one hundred persons, including children, and then and there singing, chanting, parading, shouting, and milling about in and around said Bank premises, and causing others to do so; conpsired with others to cause said crowd, or part of them, to lock arms in front of the entrance to the Bank premises so as to bar entry to and exit from said Bank; conspired with others to cause said crowd, or part of them, to enter said Bank and sit in, lie in and otherwise obstruct the lobby of said Bank so that customers were prevented, hindered and delayed from having access to tellor's windows and otherwsie transacting their lawful business; conspired with others to cause said crowd of persons, or part of them, to congregate individually and in groups unlawfully inside said Bank.

(2) That you, while said Restraining Order was in force, as a representative of the St. Louis Committee of Racial Equality, with the right to direct, control, supervise and plan the activitiesof said Committee, did so direct, control, supervise and plan as to violate said Restraining Order by causing members of said Committee and others to sing, parade, chant, mill about and congregate in and around said Bank; to enter said Bank and sit in, lie in, and otherwise obstruct the lobby of the Bank, preventing, hindering, and delaying customers from access to teller's windows and other portions of the premsises; to bar entry to and exit from said Bank by locking arms in fromt of the entrance; and to congregate and loiter individually and in groups unlawfully inside said Bank.

(3) That you, while said Restraining Order was in force, as a representative of the Committee aforesaid, with the right to direct, control, supervise and plan the activities of said Committee and its members, and knowing that members of said Committee were violating said Restraining Order, failed to so direct, control and supervise said activites as to cause said violation to cease and desist.

(4) That you aided, abetted and counselled others to violate said Restraining Order by engaging and participating in the conduct aforesaid.

The foregoing charges and specifications constitute offenses against the majesty of the law and the dignity and authority of this Court, and are punishable as for criminal contempt.

You are hereby ordered to show cause why you should not be punished as for criminal contempt.

_____
JUDGE

National Labor Management Relations Act, Title 29 USCA. Sec. 7 et seq. & Amendments thereto

New Negro Alliance vs. Sanitary Grocery Co., 303 U.S. 552

Garner vs. Teamsters, Chauffeurs & Helpers Union, 74 S.Ct. 161

Guss vs. Utah Labor Relations Board, 77 S.Ct. 598

III

THE STATUTES UNDER WHICH THESE PETITIONERS WERE TRIED AND CONVICTED ARE UNCONSTITUTIONAL AND HAVE BEEN UNCONSTITUTIONALLY APPLIED TO THESE PETITIONERS

State vs. Lanesboro Product and Hatchery Co., 221 Minn. 246, 21 NW (2) 792, 163 ALR 1108
99 ALR 607

B.

THE COURT ERRED BY EXCEEDING ITS JURISDICTION IN RENDERING THE PARTICULAR JUDGMENTS

I

THIS RESTRAINING ORDER, THE CONTEMPT PROCEEDING, AND THE JUDGMENT BASED THEREON ARE VOID AS TO THE PETITIONERS FOR WANT OF A VALID INJUNCTIVE BOND

R.S. Mo. 1959, Sec. 526.070, Sup. Ct. Rule 92.09
Ex Parte Dillon, 96 SW 2d. 1095
Contra: Jefferson Bank & Trust Co. vs. Robert Curtis, et al, St. Louis Court of Appeals #31777 (not yet reported)

II

THE EVIDENCE UPON WHICH THE JUDGMENTS OF GUILTY ARE BASED IS INSUFFICIENT AS A MATTER OF LAW TO SUPPORT THE JUDGMENTS - See Appendix "A"

R. S. Mo. 1959, Sections 556.120, 556.130, 546.320;
State vs. Montgomery, 116 SW 2d 72

III

THE FINDINGS OF FACT AND JUDGMENTS AND COMMITMENT ORDERS ARE INSUFFICIENT AS A MATTER OF LAW AND ARE VOID. See Ex. P-10 a-e and Ex. P-11 a-e.

R.S. Mo. 1959, Sections 476.110 and 476.140
Sup. Ct. Rule 35.01
Glenn vs. Hendrix, 349 SW 2d 532
Scott vs. Davis, 328 SW 2d 394
G_____ vs. Souder, 303 SW 2d 883

IV

THE FINES AND SENTENCES ARE EXCESSIVE AND THEREFORE CONSTITUTE CRUEL AND UNUSUAL PUNISHMENT WITHIN THE PROHIBITIONS OF THE EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 21 OF THE MISSOURI CONSTITUTION

State ex rel Hawkins vs. Utley, 124 SW 2d 685
Carder vs. Carder, 61 SW 2d 391
Osborne vs. Purdome, 250 SW 2d 159
Carey, et al vs. District Court of Jasper County, 285 N.W. 236
Ex parte Fartenbury, 101 P 2d 105
Busch Jewelry Co., Inc. v. Silver, et al 8 NYS 592
Fansteel Metallurgical Corp. v. Lodge 60, 14 NE 2d 991

C.

THE ENTIRE PROCEEDINGS AND TRIAL CONSTITUTE A DENIAL TO THESE PETITIONERS OF DUE PROCESS AND EQUAL PROTECTION OF THE LAWS AS GUARANTEED TO THEM BY THE CONSTITUTION OF THE UNITED STATES AND THE SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS THEREOF, AND THE CONSTITUTION OF THE STATE OF MISSOURI, ARTICLE I, SECTIONS TEN AND EIGHTEEN (a) THEREOF. - See Appendix C.

Sup. Ct. Rule 35.01; R.S. Mo. 1959, Sec. 56.110
Gompers vs. Bucks Stove & Range Co., 221 U.S. 418, 31 S.Ct. 492
State vs. Bockman, 253 SW 2d 607
State vs. Bowenkampt, 39 SW 2d 753
Sands vs. Richardson, 252 SW 990, 41 ALR 2d 1263, Sub-par. 4
In re Barger, 365 SW (2) 89

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Jefferson Bank & Trust vs Curtis, Robert et al. Aug. 1963 - May, 1965 Box 3 Folder 3
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APPENDIX A

Digest of Testimony Relating to Each Petitioner

William L. Clay

Petitioner is William L. Clay, married, father of three children, employed as Business Agent for Local Union 410 of the Institutional and Public Employees Union and is the Democratic Alderman from the 26th Ward. He is a member of CORE.

Mr. Clay did not attend the regular CORE meeting of August 25th, but did attend the CORE strategy meeting of Thursday, August 29. (Clay Dep. 5) At the Thursday meeting he voted against demonstrating in front of the door (Clay Dep. 7). On Friday Mr. Clay met with others at the YWCA and then went down to the bank to picket. He picketed until about five o'clock and then went to a gathering on the parking lot. He was opposed to blocking the door (Curtis Dep. 37, Clay Dep. 22-23, Thompson Dep. 62, Perkins Dep. 31) and said the picket line was enough. (tr. 1426-859) Deputy Sheriff Linton stated on direct examination that he heard Clay say "We'll go in" (tr. 260), however on cross examination he said I am 90% sure it was Mr. Clay (tr. 68-9), I wasn't paying no attention to the activities out there. * *" (tr. 269) In his deposition Mr. Linton used the term 90% sure to identify Herman Thompson as being in the bank (tr. 276) and on further cross examination he stated he wasn't sure it was Clay (tr. 284) and on his deposition he stated "Well, as I'm telling you now, I wouldn't make a good witness one way or the other." (tr. 286)

Mr. Burns testified Mr. Clay was served about 5 o'clock, prior to any door being blocked (tr. 144, Exhibit P-10). After the gathering on the lot Clay walked down Washington Avenue and resumed picketing. About 5:30 Major Ruff stated he saw Clay facing west motioning behind him to demonstrators to go in

the bank (tr. 383-6). In his deposition Major Ruff stated (page 12) " * * he was just moving his arms in this manner (indicating). Q "Moving his arms in the manner you're indicating, a sweep of the arms from about level with your shoulders across the body?" Major Ruff was at that time located in the Guth building across Washington Avenue, and some distance up from the corner. Officer Scott testified he saw a group of demonstrators walk down Jefferson and go into the front door and was positive Mr. Clay was not there (tr. 472-3), Jimmie Jones, deputy sheriff stated, "I am quite sure someone spoke to him (Clay) and he said don't go in the bank" (tr. 1486)

Mr. Clay did not stand in front of the doors or enter the bank.

Norman Seay

Petitioner Norman Seay is presently employed as a work coordinator at the Ford Foundation charged with the duty of getting jobs for dropouts. He taught school from 1954 to 1960 except for two years he was in the Army. He is a member of CORE.

Mr. Seay had been active in negotiating for job opportunities for Negroes as a representative of CORE (Seay Dep. 4) but he had not engaged in any negotiations with the bank. He was present at the strategy meeting of Thursday, August 29th and voted against demonstrating in front of the doors (Seay dep. 7). He went to the bank about 4 o'clock and joined the pickets there (Seay Dep. 10) He attended the gathering on the lot and then continued picketing. He was served with the restraining order at 5:15 (tr. 235, Exhibit P-10) and according to Mr. Burns prior to any door being blocked (tr. 144).

Sgt. Murray Beech testified he was standing near the curb on Washington Ave., people were picketing with signs between him and the door of the bank, a distance of 25 feet (chart) and he saw Mr. Seay standing behind a female demonstrator, who was standing in front of the door to the bank and Sgt. Beech said he heard Mr. Seay tell the girl to move back, some people are getting behind you (tr. 330 to 338). About 5:30 or 5:45 Mr. Seay talked to Mr. Oldham and at Mr. Oldham's request went in the bank to see if he could get the people out (Seay Dep. 20, 24, C. Oldham Dep. 41). He was only able to get a couple of persons out of the bank (Seay Dep. 25). Seay then returned to the picket line and later went in and got two little girls and walked out (tr. 531).

Mr. Seay did not participate in blocking the doors and did not enter the bank, except on the occasions mentioned to remove demonstrators.

Robert Curtis

Petitioner Robert Curtis graduated from Washington University Law School, June 1959 and is admitted to practice in the State of Missouri. He is a member of St. Louis CORE and on August 30, 1963 was Chairman of the group.

Thursday evening, August 29 he chaired a strategy meeting of CORE. At this meeting the group voted to picket the bank and voted to demonstrate by standing in front of one of the doors of the bank. Mr. Curtis testified in his deposition (pg. 33) that he advised the group to obey the law. (tr. 798-799) (Clay Dep. 19, Thompson Dep. 12, Perkins Dep. 31) On Friday morning about 10:00 Mr. Curtis was served with a summons and petition for injunction and restraining order and he appeared in court

and autborized Mr. Howard to represent him and then left. At approximately 2:30 or 3:00 Mr. Howard called Mr. Curtis and told him that a restraining order had been issued. At 4:00 the demonstrators assembled at the Wheatley YWCA under the supervision of Robert Curtis (Seay Dep. 14, Curtis Dep. 25, Clay Dep. 16) and proceeded in an orderly fashion to the bank. Picketing started about 4:00 p.m. About 5:00 p.m. a gathering was held on the Guth parking lot which was attended by Robert Curtis. Mr. Curtis introduced Ray Howard to the group stating Mr. Howard was in court for us today and we should listen to his advice (tr. 1493, 756), he further stated he was not going to violate the injunction (tr. 1427, 855-6, Clay Dep. 10). Mr. Howard spoke to the group about the injunction and then there was a call for a show of hands for those willing to demonstrate at the front door of the bank. Some witnesses testified the call for a show of hands came from a Carl Ferris (tr. 850, 997a, Clay Dep. 22). One witness testified that Mr. Curtis called for the show of hands (tr. 1105). Another witness first testified Curtis called for the show of hands (tr. 680) and then testified she didn't know who called for the show of hands (tr. 706). After the show of hands some of the group started walking toward the front door of the bank and a witness testified that he overheard Ray Howard state "What are you going to do now, Bob?" and Curtis answered "You saw what we are going to do. We just took a vote." (tr. 1067) Atty. Howard testified this conversation did not take place (tr. 1471).

Some members of the group then stood in front of the Washington Avenue entrance. Officer Scott testified Curtis said "They are on their own." (tr. 478) About this time Curtis Left the area and went to the YWCA and remained several minutes.

After he returned he talked to Ray Howard and Charles Oldham on Jefferson Avenue about 5:45 and as a result of such conference he went inside the bank to ask the demonstrators to leave. The statement that he made inside the bank was to the effect that the demonstrators were to leave at 6:00 and go to the WheatleyYWCA (tr. 52, 122, 124, 134, 305, 763, 530, 871, 990, 695) Witnesses stated that he entered the bank sometime between 10 minutes to 6 and 4 minutes to 6. After the group left the bank there was a rally at the Wheatley branch of the YWCA where Mr Curtis addressed the group, talked about the demonstration and asked everybody to come to a rally at 5625 Wells on Sunday. (tr. 875, 697, Curtis Dep. 58-59).

Mr. Curtis was served with restraining order at 5:45 (tr. 235, Exhibit P-10) according to Dep. Burns. Dep. Linton testified he was served between 4:45 and 5:30 before the blocking of the door (tr. 250, 264, 298)

Mr. Curtis did not stand in front of any of the doors nor did he enter the bank to take part in the demonstration.

Lucien Richards

Lucien Richards is employed by Homer G. Phillips Hospital as a nurse anesthesiologist, married and has three children and on August 30 was a member of St. Louis CORE.

He did not attend the strategy meeting on Thursday evening. (Richards Dep. 6). He assembled at the YWCA at 4:00 and was a line captain in charge of one of the picket lines (tr. 507,975). He did not attend the gathering on the Guth parking lot (tr. 1420) and did not stand in front of either the front or back doors. Around 5:25 some people started going in the bank and he went inside. Mr. Richards stood at the North end of the

bank near the vestibule entrance and participated in the singing and hand clapping. (tr. 54, 1541, 693) He did not sit on the floor and did not block the tellers cage. Around 6:00 he left the bank with the other demonstrators (tr. 1466) and attended the rally at the Wheatley YWCA. He was served with the restraining order at 5:15 (tr. 236, Exhibit P-10) prior to the blocking of doors (tr. 144).

Charles Perkins, Jr.

Petitioner Charles Perkins, Jr., is a Baptist Minister associated with the Fairfax Missionary Baptist Church and on August 30 had been a member of CORE for about two months. He attended the strategy meeting of CORE on Thursday evening and participated in a discussion relating to demonstrating in front of the doors. He spoke against standing in front of the doors and voted against the motion. He assembled with the group at the Wheatley YWCA around 4:00 in he afternoon and took part in the picketing. Evidence indicated he attended a gathering on the Guth parking lot and tried to persuade one demonstrator to not stand in front of the door (tr. 1013-14). He observed the pushing and shoving at the front door when a demonstrator whose name is James Freely was knocked down and the children were injured. At this point Rev. Perkins entered the bank and spoke to Sheriff Tozer about "sheriff brutality". (tr. 534, 694,360) He also gave a statement to some news media. After that he stood around in the bank observing. He did not interfere with bank business (tr. 102, 205) but just stood there (tr. 309, 342, 543) at one time he was observed facing the singers and keeping time to music (tr. 1487) At about this time Mr. Howard came in and spoke to Rev. Perkins and told him to leave the bank. Rev.

Perkins then left the bank and engaged in picketing until the demonstration ended at 6:00. He went to the rally at the YWCA but did not make any statements or participate except as a spectator. Rev. Perkins did not stand in front of the doors of the bank, he did not sing inside the bank, he did not clap his hands, he did not sit on the floor, he did not obstruct the tellers cages. He did protest quite loudly and vociferously about "sheriff brutality".

He was served with restraining order at 5:05 (tr. 236, Exhibit P-10) prior to door being blocked (tr. 140-144).

APPENDIX B

(Jefferson Bank vs. Robert Curtis et al Vol. II,1st 9)

THURSDAY AFTERNOON, SEPTEMBER 26, 1963
2:00 P.M.

ANN HEXTER,

PRODUCED, SWORN AND EXAMINED ON BEHALF OF THE plaintiff, testifies as follows:

Direct Examination

QUESTIONS BY MR. MILLSAP:

Q Would you state your full name, please? A Ann Hexter.

Q Where do you live? A University City.

Q How old are you? A Sixteen.

Q Are you in school at the present time? A Yes.

Q Where are you in school? A University City High School.

Q Now, Miss Hexter, are you a member of the St. Louis Committee of Racial Equality? A Yes.

MR. CAHILL: At this time, Your Honor, the defendants would like to make some objections to the testimony of this witness on several grounds. Number one this witness is a named defendant in the injunction suit brought by the plaintiff bank. She is a named defendant. Secondly the testimony has shown that she is a member of the organization know as CORE and thirdly our evidence will show that whatever statements she may give here today have been brought about by the -649- improper and enethical conduct of Mr. Millsap here who has intimidated and coerced this witness and her relatives and family into making statements at depositions and today and has talked to her in violation of all the known principles of law because he is acting as a special prosecutor in this case and has knowingly talked to a defendant prior to her trial, taken

statements from her without the presence of counsel and without their knowledge and sought to intimidate and coerce her.

THE COURT: Anything further?

MR. CAHILL: We think it's highly improper at this time and furthermore, Your Honor, and I think this is the most important, he has assured her immunity if she would testify. He has assured her immunity if she would testify here and as a prosecutor giving that kind of immunity and thatkind of gurantæ to a witness it violates all the known precepts of proper conduct for counsel.. He is not a party litigant here, this man is serving as a special prosecutor. He talked to a known defendant and our evidence will show he Knows she is a known defendant. She admitted such in the deposition she took and of cours, naturally our objection is based on the fact that this violates all the constitutional rights of the defendants, it violates all the procedures of due process in doing this and we make objection on the Constitutional grounds, the guarantees of due process as -650-
guaranteed by the Fourteenth Amendment to the Constitution and of course all the pertinent State Statutes.

THE COURT: Anything further?

MR. CAHILL: No, sir.

THE COURT: Mr. Millsap?

MR. MILLSAP: If Your Honor please, I am shocked by Mr. Cahill's slanderous and defamatory remark that I have been guilty of unethical practice. I am amazed at Mr. Cahill who's practiced at the Bar would make such accusations.

MR. CAHILL: I wouldn't make them without some foundation --

THE COURT: Let him finish.

MR. MILLSAP: If Your Honor please, if Mr. Cahill has any

such evidence, Your Honor, I think --

THE COURT: Proceed with your argument.

MR. MILLSAP: With reference to this, Your Honor, he's questioning whether this particular individual should testify, Your Honor. I'll say this, that in my opinion, Your Honor, Miss Hexter was a defendant in the injunction action, not a named defendant as such, Your Honor, because at the time the injunction action was brought we didn't know Miss Hexter or whether or not she was a member of the St. Louis Committee of Racial Equality. She could have been. But as a class, Your Honor, in my opinion if Miss Hexter knew of the restraining order, she was bound by the restraining order, Your Honor, -651-
just as much as anybody else would be whether or not they were members of the St. Louis Committee of Racial Equality.

Now, Your, Honor, with reference to any Constitutional safeguards this witness may have. Your Honor, the record will show at all times Mr. Stix was present while Miss Hexter was interrogated in her deposition and further, Your Honor, the deposition, the original of which is on file in this Court will show not only, will show, Your Honor, not only did Mr. Stix but also Mr. Oldham both conferred with Miss Hexter before she came to my office to give her deposition, and Your Honor, with reference to any Constitutional safeguards I see no grounds - there is no merit of any kind in anything Mr. Cahill said why this witness shouldn't testify. The only thing he seems to be saying is he is fearful the witness may tell the truth in the proceedings and he doesn't want her to tell the facts. The other remarks, I am shocked that he should make these statements.

MR. CAHILL: Your Honor, may I call attention first of all to the fact that the deposition of Miss Hexter was taken last

Saturday, on the 21st of September, 1963. Our evidence shows that this conversation that I elude to by Mr. Millsap was done prior to the 21st of September, prior to the taking of her deposition, prior to her ever conferring with Mr. Stix and that there were conversations with this witness here and with her parents and that elusions and threats and various forms of -652- intimidation were used by Mr. Millsap here and I am frankly shocked to find he would do that especially to a sixteen-year-old defendant; especially to a sixteen-year-old defendat when he had been named as special prosecutor in the case.

It would be bad enough for co-counsel -- for counsel for a private party, but he now holds the authority, the might and the dignity of this community. It is not just a matter now, as I understand it, between the bank and CORE, this is a matter between the Court and the community and these people who have been charged with contempt and therefore he holds over his head the authority of a special prosecutor and he has the duties of prosecuting properly just as I have, just as any lawyer would have who holds that special position. To go out and talk to a defendant and threaten her and threaten to embarrass her and her family if she doesn't testify I think is of the highest and most important, most unethical type of thing tha a lawyer could do.

Furthermore in Mr. -- in this deposition here on Page 7 of Miss Hexter's deposition Mr. Millsap says:

"For the record, please, Mr. Stix, I want to clear something up with you, if there is some misunderstanding on your part. Let me say to you that Miss Hexter is a defendant in that the original injunction action was brought against a number of individuals indivdually, and as representatives -653-

of a group, a class known as the St. Louis Committee of Racial Equality. I think the evidence will show Miss Hexter had knowledge that the Court had issued a restraining order prior to a certain demonstration or series of demonstrations at the bank." (Continued on next page) - 653A -

"Now, it's true she is not presently one of the nine individuals who has been cited by the Court for contempt, but she is a defendant in the injunction action with knowledge of the injunction action, suit, and notice of the restraining order. So I want to be clear with you so there will be no misunderstanding on her position here."

That clearly show, Your Honor, that he knew she was not just an ordinary witness, she's a defendant and he has talked to her, he has gone to her family and coerced her and her family and told them that they must testify in a certain manner and said to them "If you testify in this manner I will not prosecute you." If anything could be any clearer than offering immunity I don't know what it could be.

MR. MILLSAP: Your Honor, Mr. Cahill's remarks are the most untruthful remarks and dishonest remarks, if he has any knowledge on this, I can imagine. Your Honor, it's quite true I did see Miss Hexter at her home in the presence of her mother, Your Honor, and the evidence will show that at no time did I ask Miss Hexter to make any statement with reference to this, other, Your Honor, than the truth. I asked Miss Hexter when she asked me what I wanted of her, which she inquired of me several times in the presence of her mother and at no time did I talk to her in anyone else's presence: the evidence will show, Your Honor, if it should be in this proceeding and it isn't relevant to this proceeding -654-

in any sense, I asked Miss Hexter only to tell the truth, Your Honor. I said "Miss Hexter, tell the truth is all I want of you." I have further evidence, Your Honor, that will show if Mrs. Hexter were here and she and her daughter were to tell the truth I advised her her daughter's condition in this matter is serious, in my opinion she had purposely and deliberately violated orders of the Court. I advised her to obtain counsel. I advised Mrs. Hexter and her daughter she should obtain counsel immediately. The evidence further would show that I did not inquire of any facts relating to this at her home at that time in any respect nor did she tell me any in her home. The next time I had a communication was with Mr. William Stix who called me in connection with this.

I ask Mr. Stix for such a statement with reference to what the young lady had said. I told Mr. Stix all I wanted was the truth. Any suggestion to the contrary by Mr. Cahill does himself a great injustice.

MR. CAHILL: The fact remains she is a defendant, he talked to her, he talked to her when she did not have counsel and that statements were made to which coerced and threatened and promised her immunity if she would testify in this matter. She's a sixteen-year-old girl, she's a defendant in this case. It would be highly improper for him to go to her anyway if he were just representing the bank, but having this double banner of authority now, now that he's a -655-
special prosecutor, he comes under the special provisions of all prosecutors who have a duty to the public at large as well as to their calling.

THE COURT: Anything further, sir?

MR. CAHILL: There is nothing further. Well, may I just have a moment, Your Honor, to see if we have certain evidence that we want to offer at this time.

Then, Your Honor, at this time I would like leave of Court to question this witness to lay the proper foundation for the statement that I have made, for the motion that I have made. I would like to question the witness first of all before going into the testimony that Mr. Millsap wishes to offer to show evidence of the coercion and promise of immunity if she would testify and I ask leave of Court to do it now before going into the testimony, before any testimony is offered to this Court.

THE COURT: Overruled.

MR. CAHILL: You will not allow me to do that at this time?

THE COURT: Not at this time.

MR. CAHILL: May the record show I asked for this prior to her giving any testimony.

THE COURT: It may so show.

MR. CAHILL: May I make an offer of proof as to what we would show in this matter if allowed to question her? -656-

THE COURT: You may, sir.

MR. CAHILL: The defendant's testimony would show, if allowed to question this witness, that some time prior to Wednesday, September 18, 1963 that the attorney for the bank, Mr. Wayne Millsap, who has now been appointed special prosecutor in this matter, went to the home of the witness here Ann Hexter, and there met her and her mother at the house and that he talked to both of them and indicated to them that he wanted and expected her to be a witness in this cause and that he told her that she was in a particularly dangerous position and that if she would cooperate and would testify that he would do his best to see

that the Court did not prosecute her for any violation of the Court's orders and taht if she didnot do so she and her brother would be embarassed and her brother would be brought back from out of state to testify, would be extradited, I believe the word was used, brought back to testify in this case and that she and her family would be held up to ridicule. The State's evidence will show -- pardon me, I mean the defendants' evidence will show that after having this conversation with this young lady that he talked to Mr. William Stix, her attorney, over the telephone and that he told him substantially the same thing.

THE COURT: Be overruled. You may proceed. -657-

RECROSS EXAMINATION

QUESTIONS BY MR. CAHILL:

Q Now, then, talking aout speaking to attorneys, have you talked to Mr. Millsap before this day? A Yes.

Q Did you talk to him in his office where your deposition was taken? A Yes.

Q And before that time did you talk to him? A Yes.

Q When did you first see Mr. Millsap? A You mean to talk to him?

Q To talk to him, yes. Did he call you on the phone first?

A No.

Q Well, when did you first talk to him? A He came to my house Thursday night before.

Q What time, about? A About nine-thirty.

Q About nine-thirty at night he came to your home. Who was

at your homr when he came to your home? A Myself, my mother and my younger brother.

Q Now, you say Thursday, are you talking about the past Thursday, a week ago today? A Yes.

Q Today is the 26th, that would be the 19th of September; is that the day he came to your hoem? A Yes.

Q September 19th. And when he came to your home, who was there? -722- A Myself, my mother and my younger brother.

Q Youself, your mother and your younger brother. How old is your younger brother? A Twelve.

Q Twelve-year-old child. All right. Now, then, is that the first time you had talked to him? A Yes.

Q Did he identify himself. A Yes.

Q How did he identify himself. A I guess he said "I am Mr. Millsap."

Q Did you know who Mr. Millsap was at thattime? A Yes.

Q And who did you think he was? A I knew; he was the prosecuting attorney of this case, and I knew he was attorney for the bank.

Q Allright. And knowing that, did he talk with you then about this case? A Yes.

Q And did he tell you thathe expected you to testify? Well, all right, I will just ask you this; what die he tell you and what did you say to him? A Well, I remember - - I don't remember his exact words, but it seemed to me that he was saying - -

MR. MILLSAP: If Your Honor please, I ask that anything that seemed to her I might have been saying be striken.

THE COURT: Sustained. -723-

MR. CAHILL: Just tell us what he said to you and what you said to him, as closely as you can recooect.

A He told me of -- and my mother, my little brother, of the danger I was in, and di they know I could be sent to prison.

Q Told you you could be sent to prison. you are sixteen years old, aren't you? A Yes

Q And - - A And he said all I had to do was tell him the truth.

MR. MILLSAP: Speak up a little louder.

A He said all I had to do was tell him the truth, and he could see to it that I was not put in prison.

MR. CAHILL: He could see to it that you sern't put in prison:

A Wait, wait, not exactly.

Q What did he say? A That is the exxence of what he said.

MR. WILSON: That is the exxence of what he said.

MR. MILLSAP: If your Honor please, I ask that this be striken as the essenc of what I said.

MR. WILSON: I think she has the right to interpret any conversations.

THE COURT: Sustained, ordered stricken. Tell just as closely as you can what he said.

MR. CAHILL: Have you told us as closely as you can recollect what he said?

THE COURT: What did he say. Do you remember any words that he said?

MR. WILSON: They don't have to be his exact words. As near as you remember what he said.

MR. CAHILL: As closely as you can recollect, that is Mr.

Millsap's words to her, in his exact words, as closely as you can recollect, his own words. Will you tell the Court, again, as closely as you can recollect what Mr. Millsap said to you?

A Shall I repeat what I said?

Q Please, again, just tell us in your own words as closely as you can recollect what he said.

A He said I was in danger of being put in prison. He said that all he wanted was the truth, because we couldn't understand exactly why he was there, and we kept asking him "What do you want?"

MR. MILLSAP: I am sorry, what?

A We kept asking you why you were there, and you kept saying, "I just want the truth" You asked me a little bit about the parking lot discussion, and then I refused to tell you anything else and you said something to the effect that as long as I cooperated with you, which I didn't understand what you meant by cooperating with you, that you could protect me from being put in prison.

MR. CAHILL: Now, Miss Hexter, did he say anything to you about your brother? A Yes.

Q What did he say about your brother?

A He asked me - - he asked us where my brother was. We told him he was at the University of Wisconsin. He said, "Do you know I have --" My little brother asked him, he said - - my little brother said, "You can't get him, he is all the way up in Wisconsin." Mr. Millsap, said, "I can extradite him from Wisconsin, if I please."

Q He can extradite him from Wisconsin, "if I please." All right, go ahead.

A And I was - I told my mother I didn't want to say any-

anything, maybe I should call Ray Howard or Charles Oldham. He said, "I con't think you should deal with those people, they are people that are going to perjure themselves in Court." He said, "Of course you should get counsel."

MR. MILLSAP: What was that again, Miss Hexter?

MR. WILSON: You heard what she said, Mr. Millsap.

MR. MILLSAP: I am sorry, I didn't hear.

MR. WILSON: You are not deaf.

THE COURT: Just one person, and then no personal references.

MR. CAHILL: Mr. Millsap heard what she said, he just wants it repeated for his own obvious purposes.

THE COURT: Restate your answer. What was your answer? Read it back, Mr. Reporter.

(Previous answer was read by the reporter)

MR. MILLSAP: "Of course, you should get counsel," is that correct?

A Yes.

MR. CAHILL: Go right ahead, then, Miss Hexter.

A Then my mother was saying, "I really - " My father was out of town, she said, "I really think I should talk to my husband before I - so I know what to do." And he said, "You realize I am a busy man and I can't wait until then. I will just have her subpoenaed tomorrow."

Q Just have her subpoenaed tomorrow. What else did he say, anything else? A Nothing relating to this case.

MR. CAHILL: That is all.

REDIRECT EXAMINATION

QUESTIONS BY MR. MILLSAP:

Q Miss Hexter, when I was out at your house, do you recall when the question of your father being out of town came up, and your mother mentioned that, that I suggested to your mother

that she communicate with your father by telephone?

MR. WILSON: Just a minute, I object to the leading form of the question. He wants to ask what he --

THE COURT: She may answer.

A Yes. And then she said she couldn't, because she didn't know whether he was in Cambridge or New Haven.

MR. MILLSAP: I beg your pardon?

A She said she could not call him at this time.

Q Did she say she would try to reach your father?

A Yes.

Q Did I suggest that she try to do that?

A Yes.

Q Do you recall me saying, Miss Hexter, at that time, that "I suggest you call counsel immediately, I think you ought to have counsel over here right now"? Do you remember me saying that to your mother? A No.

Q You don't remember that, Miss Hexter? A You didn't say anything about bringing counsel over here right now, not that I remember.

Q You remember me saying, "I think you need counsel immediately"? A I think you might have said that.

Q All right.

MR. WILSON: I m going to object to anything she thinks he might have said.

MR. MILLSAP: Is that your best recollection?

MR. WILSON: I object to anything she thinks she might have said. A Okay, that is my best recollection.

MR. MILLSAP: All right. Now, Miss Hexter, when I was out there, I told you all I wanted you to do was tell the truth, is that right?

A That is right.

MR. WILSON: I'm going to object to these leading questions.

THE COURT: Overruled.

MR. WILSON: This is Mr. Millsap's witness, Your Honor.

THE COURT: She has so testified prior to this.

MR. MILLSAP: Miss Hexter, when I was there do you recall me telling you and your mother that in my opinion both you and your brother had violated an order of this Court?

MR. WILSON: I'm going to object to this type of questioning of this witness as leading and suggestive. This is Mr. Millsap's witness and he is trying to impeach her. He is bound by her testimony, Your Honor.

MR. MILLSAP: If your Honor please, I am not bound by the cross-examination testimony they put in.

THE COURT: She may answer. Proceed.

A Restate your question - - oh, yes.

MR. MILLSAP: All right. Miss Hexter, when I was out there do you recall my telling you and your mother that while there was not presently only nine defendants who had been cited by the Court, there were many other individuals who had violated the order of this Court, and you and your brother were two of them? -729-

(Continued on next page) - 729 A

MR. WILSON: Just a minute, again I'm going to object to this line of questioning as being questioning simply for a self-serving -- to save Mr. Millsap's own neck for his bad acts, and the violation of the rules of evidence that he has indulged in here.

THE COURT: Overruled. Proceed.

MR. MILLSAP: I ask that Mr. Wilson's remarks be stricken from this record, Your Honor.

THE COURT: Proceed. Overruled.

MR. MILLSAP: Miss Hexter, you remember me telling you that you didn't appear to be the type of person that would be violating Court orders?

A Yes.

Q Do you remember me telling you, Miss Hexter, that I didn't want to see you in trouble, that you didn't appear to be the type of person that would be involved in something of this nature?

MR. WILSON: I object to that.

MR. CAHILL: That is all right.

THE COURT: She may answer.

MR. MILLSAP: Do you remember me saying that to you, Miss Hexter? A Yes.

MR. MILLSAP: I have no other questions.

MR. CAHILL: Now, Your Honor, first of all it's obvious from the testimony given here by the witnesses and questions asked by Mr. Millsap himself that he conducted himself in a most improper manner by going to the home of a sixteen-year-old girl and questioning her in such a manner as to indicate to her that he, the high and mighty prosecutor and representative of a rich and mighty corporation, the bank, had the right to free her from being punished. Now, I think that is highly unethical, Your Honor, and we are asking, first of all, that her testimony, all the testimony that she gave here today be stricken from the record because of the way that it was coerced and brought into this Court. And may we have a ruling on that first, Your Honor?

THE COURT: Overruled.

MR. CAHILL: Thank you. Now, then, Your Honor, I would like

next of all to ask this Court to remove Mr. Millsap from his position as attorney for the Court in this matter and to appoint any other member of this whole Bar to serve in that capacity. We are faced here, Your Honor, with a man who represents the plaintiff bank and who also has set himself up as prosecutor, at the Court's appointment, and he has acted in such an unethical manner that he is now both Judge, jury and executioner of all of these defendants here. They could not possibly have the benefit of the free and equal due process of the law that every defendant is entitled to, because of his unethical conduct, and because of the fact that he represents the bank here in such a manner as to preclude them - 731 - from having a fair trial. And we ask, Your Honor, first of all to remove him from his duty as attorney for the Court. Now, of course he can represent the bank as long as the bank wishes to retain him, but to remove him from his position as attorney for the Court and appoint any other member of the Bar, or any three members of the Bar, and five members of the Bar that the Court chooses.

THE COURT: Overruled.

MR. CAHILL: Then, Your Honor, we ask that somebody else in addition to Mr. Millsap be appointed to act in that capacity.

THE COURT: Overruled.

MR. CAHILL: Thank you, Your Honor. May the record show that we have made this request, and that we point out to the Court that in matters of this kind where we have a criminal charge where the attorney representing the Court is representing the dignity and majesty of the Court, who we all want to honor and to obey, that now that duty has been given to Mr. Millsap who is a partisan in this matter, who is a party liti-

gant who represents the bank, and who has now taken his position as a party litigant and counsels for the bank and used that, and used that to bolster his own personal regard as far as the bank is concerned. Now, it may be that in his zeal to represent his clients he has been over zealous, all of us are sometimes, us attorneys get carried - 732 - away with our duties, and of course, if he has done that, it's understandable. I have had occasions, like all lawyers have, to have that temptation. But even though that may be true, Your Honor, we think the rights of these nine defendants out here demands that they be given a fair trial, and it's obvious from his conduct and from the entire course of this trial here, as the record will show, that he has not acted properly, that he has acted as a partisan and not as a prosecutor, that he has forgotten about the rights of these individuals and has concentrated solely and only on one thing, that is, the prosecution and conviction of these persons, whils acting as a private counsel. And further, I would like to point out that he is not acting only as the attorney for the Court, seated behind him is the Executive Vice President of the bank, Mr. O'Connell. Mr. O'Connell has been here throughout every minute of these proceedings, he has counseled with him, he has talked with him. Mr. O'Connell represents the bank. This is a hearing, not the bank versus CORE but the People of the community, through this Court, versus CORE. And instead, the thing has been twisted and subverted so that now we have Mr. Millsap and the bank representing everybody against the poor people of CORE, and they are hopeless. The prosecutor and the judge and the private party have now become all one person. And I ask that he be removed, or that other person be appointed to sit with him and act as 73

attorney to prosecute this matter.

THE COURT: Overruled.

MR. MILLSAP: If Your Honor please, I feel called upon to make a remark, and it will be brief. Your Honor, not only has Mr. Cahill slandered me, Your Honor, but he has slandered this Court in suggesting that the Court and the prosecutor and the bank have all become one. It's high insult, Your Honor, that he should pay upon this Court, exercising great patience in dealing with the defendants' counsel in their conduct in this proceeding, which is despicable in many instances. And Your Honor, with reference to Mr. Cahill's remarks, I observed him constantly referring to the reporters who are present in this Courtroom, hoping that he could get some of his querulous remarks recorded in some way in the public press.

MR. CAHILL: Just a minute, Your Honor, I haven't referred to no reporter. I don't even know whether there is a reporter here or not.

THE COURT: Have you completed your statement?

MR. MILLSAP: I have, Your Honor.

THE COURT: All right. You are overruled, Mr. Cahill. Proceed.

MR. MILLSAP: I have no other questionsof this witness.

THE COURT: Do you have any other questions of this witness, any of the attorneys? -734-

APPENDIX C
IN THE MATTER OF: Jefferson Bank vs.
Robert Curtis Vol. I (2nd 7)

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS

STATE OF MISSOURI

JEFFERSON BANK AND TRUST COMPANY,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 57945-E
	)	
ROBERT B. CURTIS, et al,	)	
	)	
Defendants.	)	

BE IT REMEMBERED, that on the 4th day of October, A.D., 1963, an action in the above-entitled matter came on for hearing before the Honorable Michael J. Scott, Judge of Division #2, in Division #2 of the Civil Courts Building, 12th and Market Street, in the City of ST. Louis, State of Missouri.

APPEARANCES:

Messrs. Goodbar, Ferriss, Casserly and Millsap
By: Wayne L. Millsap, Esq., for the Plaintiff.

THE FOLLOWING PROCEEDINGS WERE HAD: -1-

THE CLERK: That is the motion, Your Honor and these are the writs of attachment. There is ten there and one for the Sheriff's return.

THE COURT: You're filing this motion, Mr. Millsap.

MR. MILLSAP: Yes, Your Honor.

THE COURT: Are you ready to proceed?

MR. MILLSAP: I am ready.

THE COURT: All right. You may proceed.

MR. MILLSAP: If Your Honor please, I have to present to Your Honor at this time a motion of issuance of attachment for contempt pursuant to Rules 92.15 and Section 526.220 of the revised statutes of the State of Missouri. If Your Honor please,

I think you have before you the verified motion by me, Your Honor, that ten individuals, Your Honor, by name Benjamin Goins, Kenneth Lee Ronald Glenn, Taylor Jones, Billie Richardson, Louis Ford, Richard Pollack, Ethel Maxie and Roberta Tournour and Ina Grand have violated the restraining order which was heretofore issued by Your Honor on Friday, August 30th, in that, Your Honor, these ten individuals entered theJefferson Bank and Trust Company today, Friday, October 4th and while they were inside the Jefferson Bank and Trust Company, Your Honor, did sit on the floor and stand in front of the doors entering into the bank and while doing so did prevent the entrance and exit of customers from the bank and while there, Your Honor, shoved and pushed customers while they were attempting to enter the-2- said bank and further, Your Honor, while these ten individuals and other individuals were present in the bank Mr. Joseph McConnell, Executive Vice President of the Jefferson Bank and Trust Company did read Your Honor's restraining order to each and every one of these ten individuals and ordered them to leave the bank, whereupon they remained in the bank, Your Honor, and presently have been taken into custody by the Metropolitan Police Department of the City of St. Louis.

At this time, Your Honor, I am respectfully requesting Your Honor to issue an attachment from this Court directed to the Sheriff of the City of St. Louis, ordering the Sheriff of the City of St. Louis to attach by body attachment the ten named individuals, to bring them before this Court forthwith to either disprove or purge their contempt, Your Honor, or be committed, Your Honor, or be put on bail as is appropriate at that time, Your Honor.

THE CLERK: I verified this, Your Honor. I verified Mr.

Millsap's signature. The date is here, sir. I have the privilege and right to sign the clerk's name, Mr. Phelim O'Toole, Clerk of the Circuit Court by Ferd.C. Kaufman, Deputy Clerk, Division #2 and the date is October 4th, sir.

THE COURT: Will you add the time?

THE CLERK: The time I did it, sir, that wouldn't necessitate that, whether or not you're either going to sustain or over-

rule, sir, then we will affix the time.

THE COURT: Mr. Millsap, in your motion for issuance of attachment for contempt pursuing to Rule 92.15 and Section 526.220 revised statutes of Missouri, 1959, the Court will sustain the motion and so order and let the record show at 7:30 P.M., 10-4-63, signed by Michael J. Scott, Judge of Division #2.

THE CLERK: Mr. Burns, here are ten writs of attachment, sir, and this is one with all the names on it, you are to make a return on it which you will do tonight, after you have brought the prisoners over after service is made and the prisoners are brought here.

SHERIFF BURNS: You want them brought forthwith, now?

THE CLERK: Yes.

THE COURT: Court will be in recess.

(A recess was had)

(After the alleged contemnors were brought into the Courtroom the following entered their appearance for the alleged contemnors: Robert E. Wilson, Esq., Margaret B. Wilson, Clyde S. Cahill, Esq., Robert Ratermann, Esq., and Miss Wyvetter Younge.)

MISS YOUNGE: Your Honor --

THE COURT: Pardon me just a minute. We are not ready yet.

MR. WILSON: We need a few minutes.

THE COURT: All right. Go ahead. At this time Court will be in temporary recess.

(A recess was had)

MISS YOUNGE: One of the persons sitting there has an asthma attack and probably should be taken to the hospital and the other persons sitting there, they suggested that she should be taken to the hospital. She is having an asthma attack.

MR. MILLSAP: Let me ask you, ma'am, Miss Younge, do you represent her?

MISS YOUNGE: I represent all the persons before the Court, yes.

MR. MILLSAP: Do you know where the defendant lives, you represent?

MISS YOUNGE: She lives on Etzel, I don't know the exact address.

MR. MILLSAP: In the City of St. Louis?

MISS YOUNGE: That is correct.

MR. MILLSAP: If there are further proceedings in this matter in connection with the conduct of this individual -- and by the way, what is her name?

MISS YOUNGE: Her name is Richardson, I believe.

MR. MILLSAP: Billie Richardson?

MISS YOUNGE: J I believe so. -5-

MR. MILLSAP: In connection with any proceedings with Billie Richardson, as her attorney of record, will you have her back before the Court in connection with any future proceedings the Court may have with her?

MISS YOUNGE: I am not going to take that responsibility. The child needs to go to the hospital, and that is our request of the Court.

MR. MILLSAP: As I understand it, then, you can give the

Court, as her attorney, no assurance you can have her back?

MISS YOUNGE: I believe she's a teenager. Are you suggesting she be put under guard while she is in the hospital?

THE COURT: How old is she?

MISS YOUNGE: 16. Her mother is here too, Your Honor.

THE COURT: Her mother is here. Will you have the mother come up?

What is your name, madam?

MRS. RICHARDSON: Delores Richardson.

THE COURT: Where do you live?

MRS. RICHARDSON: 5721 Etzel.

THE COURT: Are you married or single?

MRS. RICHARDSON: Married.

THE COURT: Do you live with your husband there, ma'am?

MRS. RICHARDSON: Yes.

THE COURT: Where is your husband employed? -6-

MRS. RICHARDSON: Universal Metals.

THE COURT: How long has he worked there?

MRS. RICHARDSON: About four years.

THE COURT: Do you have any further questions, Mr. Millsap?

MR. MILLSAP: Yes, Your Honor. Mrs Richardson, I understand your daughter Billie Richardson is ill; is that correct?

MRS. RICHARDSON: That is right. She has an asthma attack.

MR. MILLSAP: Do you think she should go to the hospital?

MRS. RICHARDSON: Yes, so she could get a shot.

MR. MILLSAP: How old is she?

MRS. RICHARDSON: 14.

MR. MILLSAP: If the Court sees fit to have any further proceedings for her before the Court, the Judge sees fit to excuse her at this time, would you see she is returned here at

such time the Court requests her presence?

MRS. RICHARDSON: Yes.

MR. MILLSAP: I have no objection.

THE COURT: You may take her to the hospital.

(A recess was had)

-7-

THE COURT: At this time there has been filed with the Court a motion for issuing of an attachment for contempt pursuant to Rule 92.15 and Section 526.220 revised statutes of Missouri, 1959, applied for by Wayne L. Millsap, attorney and in the motion it's: Plaintiff moves the Court for the issuance of an attachment of the bodies of Benjamin Goins, Kenneth Lee, Ronald Glenn, Taylor Jones, Billie Richardson, Louis Ford, Richard Pollack, Ethel Maxie, Roberta Tournour, Ina Grand and other person or persons unknown for violation of the temporary restraining order issued by this Court on August 30th, 1963, which is now in full force and effect, by physically hindering and preventing customers of the plaintiff and other members of the public, from customary access to tellers' windows, by locking arms in front of the doors of the plaintiff's place of business or in front of the tellers' windows in plaintiff's place of business, or sitting in, lying in, and standing in or singing in plaintiff's business or by harassing plaintiff's employees or customers in front of, around or at plaintiff's place of business, wherefor plaintiff's prays this Court to issue its order attaching the bodies of Benjamin Goins, Kenneth Lee, Ronald Glenn, Taylor Jones, Billie Richardson, Louis Ford, Richard Pollack, Ethel Maxie, Roberta Tournour and Ina Grand and the other person or persons unknown who may be in violation of the restraining order of this Court and that they be -8- brought before this Court forthwith and unless they shall dis-

prove or purge the contempt, commit them to jail or take bail for their appearance in said Court at the next term thereof to answer for the contempt and abide the order of the Court and in the meantime to observe and obey the injunction.

The restraining order in full force and effect is: Temporary restraining order. Order to issue as to all defendants in the matter of the Jefferson Bank and Trust Company, a corporation, versus Robert B. Curtis, et al, in C use Number 57945-E, Division Number 2 in the Circuit Court of the City of St. Louis. Temporary restraining order, Order to issue as to all defendants individually and representatives of a class known as the St. Louis Committee of Racial Equality from physically hindering, obstructing, interfering with, delaying, molesting or harassing other persons desiring to enter plaintiff's banking premises from entering said premises for the purpose of conducting their business with plaintiff or for any other purpose.

b: Congregating or loitering individually or in groups inside plaintiff's banking premises and therein engaging in any acts or conduct of whatsoever character which interferes with, intimidates, harasses, hinders and annoys plaintiff's employees in the performance of their duties or other persons in the conduct of their business with plaintiff or which in any way interferes with the proper and normal conduct of plaintiff's banking business.

-9-

c: Physically hindering, obstructing, interfering with, intimidating or in any other manner preventing customers of plaintiff or other members of the public from having the usual and customary access to the teller's windows located in plaintiff's banking premises or access to any other department or portion of said banking premises wherein plaintiff conducts

its banking business.

It is further ordered that until the hearing of said motion and order therein the defendants do absolutely desist and refrain from:

a: Physically hindering, obstructing, interfering with, delaying, molesting or harassing other persons desiring to enter plaintiff's banking purposes from entering said premises for the purpose of conducting their business with plaintiff or for any other purpose.

b: Congregating or loitering individually or in groups inside plaintiff's banking premises and therein engaging in any acts or conduct of whatsoever character which interferes with, intimidates, harasses, hinders and annoys plaintiff's employees in the performance of their duties or other persons in the conduct of their business with the plaintiff or which, in any way, interferes with the proper and normal conduct of plaintiff's banking business. -10-

c: Physically hindering, obstructing, interfering with, intimidating or in any other manner preventing customers of plaintiff and other members of the public from having theusual and customary access to tellers' windows located in plaintiff's banking premises or access to any other department or portion of said banking premises wherein plaintiff conducts its banking business.

It is further ordered that plaintiff post bond in the sum of $10,000.00. Defendants ordered to show cause in Division Number 2 of the Circuit Court of the City of S t. Louis, Missouri, on Thursday, September 26, 1963 at ten o'clock A.M., why a temporary injunction should not be granted as prayed. Signed Michael J. Scott, Judge, Division Number 2, Circuit

Court, City of St. Louis.

Said motion was sustained and the Court ordered Martin L. Tozer, Sheriff of the City of St. Louis, State of Missouri, to bring forthwith, without excuse or delay, bring and cause to be brought before the Honorable Circuit Court of the City of St. Louis in Division Number 2 thereof the bodies of any and all persons who shall, who with knowledge of temporary restraining order heretofore issued in this proceeding, shall violate said restraining order by standing in, lying in, sitting in, singing or walking in the Jefferson Bank and Trust Company. And as ordered brought forth with Benjamin Goins, Kenneth Lee, Ronald Glenn, Taylor Jones, Billie Richardson, Louis Ford, Richard -11- Pollack, Ethel Maxie, Robert Tournour and Ina Grand. The Sheriff's returns indicate that Kenneth Lee, Benjamin Goins, Taylor Jones, Billie Richardson, Louis Ford, Richard Pollack, Ethel Maxie, Roberta Tournour and Ina Grand have been brought forthwith into the Court. Is that correct, Sheriff Tozer?

SHERIFF TOZER: That is correct.

MR. MILLSAP: If Your Honor please, may I request that the ten individuals be called by the Court to determine if they are now present in the Courtroom?

THE CLERK: As your names are called will you kindly stand? Benjamin Goins. Kenneth Lee. Ronald Glenn. Taylor Jones. Billie Richardson. Billie Richardson.

THE COURT: Is that the young lady that was excused?

MISS YOUNGE: Yes, sir.

THE COURT: Because of sickness. And also indicated she was fourteen years of age?

MISS YOUNGE: That is correct, Your Honor.

THE COURT: Sixteen or fourteen?

MISS YOUNGE: Fourteen.

MR. WILSON: Your Honor, I understand she is fourteen years

of age, Your Honor.

THE CLERK: Louis Ford. Richard Pollock. Ethel Maxie. Roberta Tournour Ina Grand

THE COURT: How many is that that answered? -12-

THE CLERK: Nine and the one is ten.

THE COURT: All right.

THE CLERK: You may be seated.

MR. WILSON: If the Court please before any testimony or anything is heard here I would like to point out to the Court I have never, in the twenty years I have been practicing law, seen such a flagrant violation of people's constitutional rights in my life. I would like to see the file if I may, Your Honor, and see the time that this attachment was issued.

THE CLERK: This is the top part of it, sir. Here is the time.

MR. WILSON: I would like to point out to the Court that these persons that have been named here in this attachment order were arrested at Jefferson Bank at about 5:20 P.M., that they were taken to the Fourth District Police Station and there to be booked on peace disturbance and trespass. That I went over tothe Fourth District along with this Wyvetter Younge. We were refused the right to see any of these individuals. They indulged in all kinds of chicanery and fooling around in order for a restraining order and attachment to be issued against the people here so they could be served. None the persons names were known, possibly other than Mr. Goins and Mr. Ford; their names were not written in on this attachment order until after they had -13-

been booked over there at the station. In fact they weren't even booked, they held them over there until this thing was perfected and thereafter the Sheriff's office went over there

and served the people while they were waiting to make bond and Major Dougharty and the captain in the district had told us when we came downstairs, they were ready to make bond and when we got downstairs Mr. Tozer and the deputies are there with the attachment order that was served on the people.

I would further like to point out to the Court that this attachment is void on its face, that it is improperly served, that a copy of the restraining order was not served with it and these people are unlawfully in this Court and this Court is without jurisdiction in this matter.

THE COURT: Overruled.

JOSEPH H. MC CONNELL

produced, sworn and examined on behalf of the plaintiff, deposes and says as follows:

DIRECT EXAMINATION

QUESTIONS BY MR. MILLSAP:

Q Would you state your full name, sir?

A Joseph H. McConnell.

Q Where do you live, sir? A 348 North Price, University City.

Q Where are you employed? A Jefferson Bank and Trust Company.

MONDAY, OCTOBER 7, 1963

THE CLERK: Calling the case, gentlemen. Jefferson Bank & Trust Company versus Curtis, etal, citation for contempt on a restraining order.

THE COURT: Call the parties to see if they are all here.

THE CLERK: When I call your name, the alleged contemnors, stand up. Ina Grand, Roberta Tournour, Kenneth Lee, Taylor Jones, Louis Ford, Benjamin Goins, Ronald Glenn. Seven. They all answer, Your Honor.

THE COURT: Are you ready, gentlemen?

MISS YOUNGE: No, Your Honor, the defense is not ready. Mr. Cahill has just been assigned out to a murder trial in the Criminal Division, Mr. Wilson is in the Criminal Division at this time answering the docket, and the other attorneys are not present who will represent these people, and we would like to request at this time that theCourt continue this matter for three weeks in order to give us an opportunity to prepare the defense.

THE COURT: Mr. Cahill, has he entered his appearnace as attorney?

THE CLERK: No, sir, Your Honor.

THE COURT: Who are the attorneys of record?

THE CLERK: Robert Wilson, Robert Ratermann, Margaret Wilson, and Wyvetter Younge.

THE COURT: Is Miss Younge finished as yet? -1-

MISS YOUNGE: As for now, Your Honor.

MR. RATERMANN: With respect to the attorneys, Your Honor, who have entered an appearance, I would like to remind Your Honor that he is well aware that Mr. Clyde Cahill, I believe, was present at the proceedings of last Friday evening and Saturday

morning, and that I think it is really a technical omission on his part that he did not sign the entry of appearance.

THE COURT: Anything further?

MR. MILLSAP: Well, if Your Honor please, the position, Your Honor, of this counsel with reference to the entire proceedings from the inception, with reference to the conduct of certain individuals and including, Your Honor, these individuals, has been and remains, Your Honor, that contempt of Court requires prompt punishment. However, Your Honor, also I have no objection that these defendants, as well as other defendants, Your Honor, have ample time to prepare their defense. However, Your Honor, in view of the circumstances that have occurred in this proceeding, Your Honor, and in view of what has been announced, Your Honor, with reference to future conduct, Your Honor, I do not believe that three weeks is a justified length of time, Your Honor, with reference to time to prepare the defense of these defendants, Your Honor. And the only complaint I would have, Your Honor, with reference to continuance is the amount of -2- time, Your Honor, and that it be clarified at this time who are going to be the counsel for these defendants in order that in the future at such time as Your Honor should set forth a future hearing on this matter, that we have no further complaint that the counsel are not ready or they are not present or some other reason that may be given to this Court, Your Honor.

MISS YOUNGE: May it please theCourt, I do not know specifically the names of the other counsel that will enter their appearance in this case, but I am quite sure that other counsel will come in. And I think that that is a further reason why the Court should favorably consider our request that this

matter be continued for three weeks, so that those attorneys that are going to come into the case might have ample opportunity to prepare the case. Then that would be the one and only continuance we would probably request in his matter. We were here in Court, as Your Honor knows, Saturday morning, and this is Monday morning, and we need time to prepare our defense. So, therefore, we will renew our request that the matter be continued for three weeks.

THE COURT: Anything further, Mr. Millsap?

MR. MILLSAP: No, YOur Honor, nothing in addition to what I have already said.

THE COURT: Motion for continuance will be overruled.

MISS YOUNGE: Your Honor, may we have an opportunity to -3- file a writ of prohibition?

THE COURT: You may.

MISS YOUNGE: All right, then.

THE COURT: Where do you expect to apply, the Court of Appeals?

MISS YOUNGE: Yes, sir.

THE COURT: I will give you until two o'clock this afternoon.

MISS YOUNGE: Thank you.

THE COURT: All parties will be excused until two o'clock this afternoon to return here without further notice.

(a recess was had)

THE COURT: Are you ready, gentlemen?

MR. WILSON: We are ready, Your Honor.

THE COURT: "State of Missouri, City of St. Louis. In the St. Louis Court of Appeals, September Session, 1963, Monday, October the 7th, 1963. State of Missouri ex rel Benjamin Goins, Kenneth Lee, Ronald Glenn, Taylor Jones, Louid Ford, Roberta Tournour, Ian Grand, relators, versus

the Honorable Michael J. Scott, Division 2, Eighth Judicial Circuit of Missouri, respondent, in cause number 31754.

Now at this day the Court having duly considered relators' -4-
verified petition, filed herein this day, praying for a writ of prohibition against respondent, and being sufficiently advised of and concerning the premises, doth order and adjudge that the prayer for a writ of prohibition be and the same is hereby denied.

State of Missouri, Bertha E. Cox, Clerk of the St. Louis Court of Appeals, certify the above and foregoing to be a full, true and complete copy of the order of the Court denying relators' petition for a writ of prohibition in the cause entitled State of Missouri, ex rel, Benjamin Goins, Kenneth Lee, Ronald Glenn, Taylor Jones, Louis Ford, Roberta Tournour, Ian Grand, Relators, vs. Honorable Michael J. Scott, Judge, Division Two, Eighth Judicial Circuit, respondent, number 31754, as fully as the same remains of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at the office in the City of St. Louis, the 7th day of October, 1963.

Bertha E. Cox, Clerk St. Louis Court
of Appeals

Ready, gentlemen? You may proceed.

(Continued on next page) -5-

MR. WITHERSPOON: Just a minute. May it please the Court, I would like to enter my appearance in this --

THE COURT: Haveyou signed a memorandum?

MR. WITHERSPOON: -- in this particular phase of this matter. At this time, I would like to file a pleading.

THE COURT: May I see the --

MR. MILLSAP: You are entering your appearance, Mr. Witherspoon?

MR. WITHERSPOON: Yes.

THE COURT: Do you have any comment on your motion, or are you just filing it at this time?

MR. WITHERSPOON: I would like to see, or have a copy of the citation. I looked in the Court File and I failed to find a citation issued by this Court setting forth the day and time andplace and the charges against these defendants. I saw the attachment, but it stated no date as to when these defendants committed an offense in any way, and there were no charges in there that they had committed an offense. And His Honor may recall that in the other proceeding, eventually we got the citation issued, late. But in this case, at this stage, I didn't find it in the file. I found that the attachment order was issued, but the -- His Honor's citation charging these defendants on a certain date with committing certain acts, I didn't find that in the file.

THE COURT: Any comments, Mr. Millsap? -6-

MR. MILLSAP: Yes, Your Honor, With reference to Mr. Witherspoon's suggestion, as I recall, Your Honor, Mr. Witherspon was not present at the proceedings on Friday evening, October the 4th. At that proceeding, Your Honor, the defendants in this proceeding, the seven individuals that Mr. Witherspoon and Mr. Wilson and the other counsel represent were attached, Your Honor, by order of this Court and brought before this Court pursuant to the attachment, Your Honor. There was, at that time, Your Honor will recall, some evidence presented.

MR. WITHERSPOON: Your Honor, let me interrupt. I want to see the attachment that is filed here.

THE COURT: Let him complete his statement.

MR. WITHERSPOON: He is talking about evidence.

THE COURT: Let him complete his statement.

MR. MILLSAP: Your Honor, at the completion of the evidence which, Your Honor, conclusively showed by the identification of three witnesses that the seven individuals had been, Your Honor, in violation of Your Honor's order, or at least identified these people as blocking the doors or standing in front, locking arms,sitting in front of the doors at the Jefferson Bank and Trust Company, Your Honor, Your Honor then, thereafter found and so ordered and recited Your Honor's findings which included among other things that the Sheriff, pursuant to the order of attachment issued

by this Court had attached the bodies of the defendants and had brought them before this Court as the Sheriff had been ordered to do. It further found, Your Honor, that the restraining order of this Court was in full force and effect, that these defendants had knowledge of your restraining order, Your Honor, issued by this Court, and that they had violated Your Honor's restraining order. That was the finding which was issued, Your Honor. That these defendants, on Friday evening, Your Honor, were ordered to show cause, to appear at ten A. M. this morning to show cause then and there, if any, why they should not be punished forcontempt, Your Honor, in violation of the Court's restraining order which had been issued on August the 30th. Now, Your Honor, I don't know for sure that Mr. Witherspoon is referring to, Your Honor but this clearly sets up the findings of the Court at the preliminary hearing which was held on Friday evening. The record of this Court will show that the defendants, on

motion by me and sustained by this Court were properly attached by the Sheriff of the City of St. Louis, and the record of this Court will show that the Sheriff has made his returns, Your Honor, and also physically delivered the bodies of the defendants to this Court, after which there was a hearing, and the findings, as set forth in Your Honor's order which was issued, as I recall the time, Your Honor, sometime after two A.M. on Saturday, October the 5th. -8-

MR. WITHERSPOON: Now, of course, Your Honor, Mr. Millsap has recited a hearing which His Honor had. But I am asking for a copy of the charges, and you have to have the charges before the hearing. Now, I want a copy of the pleadings setting forth the date, one thing; time will be important in this case. There isn't a single pleading here served on these parties setting forth that on such and such a date you did this or that. Now, Mr. Millsap knows what I am talking about. Now, that is not here, now, I have a copy of the alleged attachment, but the attachment order doesn't say that on such and such a date we did this, you went into the bank or you sat in the bank, it doesn't say that on a certain date. And until we get that, we really cannot plead properly in this case. Now, in the other proceeding, the document that I am talking about was finally filed on the 18th of September, But as to these seven defendants, no such citation has been issued.

MR. MILLSAP: May it please theCourt, if YOur Honor please, perhaps Mr. Witherspoon is confused in this, Your Honor; in the proceeding against the nine other individuals, Your Honor, in that proceeding we clearly proceeded as a matter of criminal contempt against those individuals as provided for by Rule 35, Your Honor. At the present time,

Your Honor, with reference to these defendants who are -9-
involved in this proceeding, we have not taken this course, Your Honor. Now, what I would like to suggest to Your Honor and I know Your Honor knows it, but I would like to inform Mr. Witherspoon as a result of his statement here, that we are not limited, Your Honor, in the way we shall proceed against these defendants or any other defendants, Your Honor, or any other parties with reference to enforcihg Your Honor's order, with reference to the kind of contempt that it may be, Your Honor. I have stated before and I state again, Your Honor, that the conduct of these individuals and also the other nine individuals constitutes both criminal and civil contempt. With reference to the charges and the procedure here, Your Honor, I would suggest Your Honor that while the proceeding is under the injunctional provision for violation of restraining orders, the attachment section, 526220, that the punishment of these individuals can be, Your Honor, under the provisions of 476 as to criminal contempt, whether or not we follow these specific rules as provided under Rule 35 by the appointment of a prosecutor and the specific notice, as we used against the other nine individuals. Now, we have not followed that course of action in this, Your Honor, but we are not required to. This is just another form of relief that is available to us, Your Honor, in this proceeding, and this is the proper proceeding under those rules and the
-10-
statutes, and we have followed those rules, Your Honor. This attachment specifically spelled out what they did, Your Honor. Further, Your Honor, Your Honor will recall and Mr. Witherspoon willnot, because he was not present, that Your Honor read my motion that I had filed in this proceeding, Your Honor had read the restraining order to the defendants and

read the attachment to the defendants, and they were here represented by counsel on Friday evening other than Mr. Witherspoon.

MR. WITHERSPOON: Mr. Millsap has not yet, Your Honor, and he evidently has studiously attempted to go around it. I am asking Mr. Millsap to find for me in this file, this Court's file, any pleading charging that on a certain date these defendants violated His Honor's order. Now, they are entitled to have that charge so that they will know, because they may have an alibi, Your Honor, and how can they defend themselves when no date is given as to when they violated this Court's order.

(Continued on next page)

MR. MILLSAP: If Your Honor please, with reference to the fact that Mr. Witherspoon suggest these defendants do not know of their conduct, I would remind Mr. Witherspoon again, though he was not present, that all of these defendants were present in this Courtroom at which time the testimony was adduced in this proceeding, Your Honor, as to their conduct when it took place and exactly what happened at the Jefferson Bank on Friday afternoon, October 4th. With reference to the specific request of Mr. Witherspoon's, Your Honor, I would suggest, Your Honor, with reference to the information that was first presented to this Court in connection with the conduct of the defendants, a motion was prepared and filed by me, Your Honor, on Friday afternoon, October 4th and filed with this Court.

Further, Your Honor, the attachment issued by this Court which was served on the defendants by the Sheriff of the City of St. Louis which specifically stated, Your Honor, in

its context that all and - any and all persons particularly mentioned these individuals, Your Honor, the defendants, who shall with knowledge of the temporary restraining orders heretofore issued in the proceedings shall violate said restraining order by standing in, lying in, sitting in or walking in the Jefferson Bank and Trust Company, Your Honor, by whatever names or additions they are known or called and specifically all the individuals in this proceeding, Your Honor, were -12- served with a copy of this attachment by the Sheriff of the City of St. Louis.

MR. WITHERSPOON: Let Mr. Millsap read from that, Your Honor, what date the offense charged here was committed on from that citation that he just read from and let him find in there any allegation that these seven did on that date commit an act in violation of this Court's order. It's not in there. I am talking about the document that was served on them.

Mr. Millsap's motion is addressed to the Court, not to the defendants and the citation was issued by His Honor, not by Mr. Millsap.

MR. MILLSAP: If Your Honor please, so far as the date being contained in the attachment which was served on the defendants, Your Honor, it was not contained, it is not required to be contained in the attachment nor have I suggested that it be contained Your Honor. But I further remind Mr. Witherspoon, Your Honor, not only did Your Honor read the restraining order and read my motion but read the attachment to all defendants who were represented by counsel on Friday, October 4th in this Courtroom.

MR. WITHERSPOON: If His Honor read this attachment

that is on file, there is no date stated in there and there is no allegation in there that these defendants, on that date, did violate His Honor's orders, that is what I am trying to -13- get over to Mr. Millsap. It's not in there. There's no allegation in there that these person named here did on a certain date violate this Court's order.

Now, if we don't have the date and pinpoint it, then, of course evidence may come in that it happened Thursday, or Wednesday or Saturday; another day. This charge ought to be specific and the time ought to be stated, because from time to time we will ask witnesses to state the time and if that time is not set forth here you put the defendants at a great disadvantage and Mr. Millsap should prepare, should have prepared that and issued the citation and served it with the tie and the charges on the defendants.

MR. MILLSAP: If Your Honor please, in view of the statements which have just been made by Mr. Witherspoon, and because he has raised this question, Your Honor, as to the conduct -- if Your Honor please, I am prepared to proceed either by civil contempt, and, Your Honor, with the proceedings we have followed throughout have complied with all of the Rules and all of the Statutes with reference to notification of these defendants of their conduct, Your Honor, and further, Your Honor, I am prepared to proceed, if Your Honor should have any desire to proceed in that manner, for criminal contempt. I have all the papers here with reference to anything in connection with the criminal contempt charges against these individuals, Your Honor. -14-

MR. WITHERSPOON: If he has them in his briefcase, Your Honor, we think he ought to file them.

THE COURT: The motion before the Court is defendants' motion to dismiss at this time alleged contempt proceedings. You wish to speak any further as to that motion?

MR. WITHERSPOON: I wanted a copy of the charges, Your Honor. I am just entering my appearance and I want a copy of the charges setting forth the date and time of the alleged offense.

MR. MILLSAP: Your Honor, the language Mr. Witherspoon uses, a copy of the charges, suggest, Your Honor, that the Court is proceeding for criminal contempt and that is a matter which I have here, Your Honor.

MR. WILSON: Whether it's civil or criminal we are entitled to know what charges are here.

MR. WITHERSPOON: And when the acts are committed.

MR. MILLSAP: With reference to that I might ask, if Mr. Witherspoon might point out any part of the Statute or Supreme Court Rules I wald like to see them.

MR. WITHERSPOON: In any proceedings, even in civil proceedings in the Magistrate Court you're supposed to set forth the date when the act was committed and that was not set forth here.

(Continued on next page) -15-

THE COURT: All right, gentlemen. Motion be overruled.

MR. WILSON: At this time we would like that any witnesses they have be excluded from the courtroom.

THE COURT: All witnesses are to go, both sides, back to the witness room back here. Now, will you -- are all of the alleged contemnors here?

MR. WILSON: They're all in Court, Your Honor.

THE COURT: Call them again to be sure they're here.

MR. WILSON: I see they're all here.

THE COURT: Call them so we are sure.

MR. WILSON: If this is going to be a civil contempt, Your Honor, then this is not necessary. If it's criminal contempt, then to call them all is necessary.

THE COURT: You say they're all here; you're answering for them?

MR. WITHERSPOON: I would like to know which way he's going to proceed now.

MR. MILLSAP: The record speaks for itself.

MR. WITHERSPOON: It doesn't show any date.

MR. WILSON: Doesn't specify any charges, whether civil or criminal.

THE COURT: Are you ready, gentlemen?

MR. WILSON: We're ready, Your Honor.

THE COURT: Are there any witnesses in the Courtroom? Call the defendants, Mr. Clerk.

THE CLERK: When I call your name arise please, and stay standing until you're told to sit down.

Ina Grand, Roberta Tournour, Kenneth Lee, Taylor Jones, Louis Ford, Benjamin Goins, Ronald Glenn.

THE COURT: All present, Mr. Clerk?

THE CLERK: All present and accounted for, Your Honor.

THE COURT: You may proceed, gentlemen.

MR. MILLSAP: Your Honor, at this time I'd like to resubmit the testimony taken in this proceeding, Your Honor, on Friday, October the 4th when the original arraignment was held in connection with these individuals, Your Honor,

particularly the testimony contained in the transcript which has been filed with this Court contained on Pages 14 through 57 of the testimony which was taken on Friday evening, October the 4th and particularly, Your Honor, the testimony of Mr. Eillon J. Ross, Joseph H. McConnell and James Allman, Your Honor.

MR. WILSON: If the Court please, we're going to object to this because it was erroneously omitted to begin with and we're certainly going to object to it being admitted at this time. There were no charges pending at that time what-

soever.

THE COURT: Testimony stands admitted. Proceed.

MR. MILLSAP: Your Honor please, at this time plaintiff rests its case, Your Honor.

MR. WILSON: Like to make a record, Your Honor.

(The following occurred out of hearing of Open Court)

MR. WITHERSPOON: We would like to move at the close of the plaintiff's case, Your Honor, to have each and every one of these defendants discharged, he verdict directed in their favor, or an acquittal, for the reason that the plaintiff has not shown that either one of the defendants had knowledge or notice of the Court's injunction prior to their entry or prior to the acts that they are alleged to have committed on October 4th, 1963. For the further reason, and we renew this objection, there has been no charge made against the defendants, the alleged attachment does not state the cause of action, that the Court had no jurisdiction and that the restraining order issued by His Honor on August 30th, 1963 did not include these parties, and that these parties here, these seven defendants were never made a party to the original

suit.

MR. WILSON: Neither were they members of the class.

MR. WITHERSPOON: That they were not members of the class involved in that suit. And there has been no evidence showing that they were members of the class of that suit, and

there has been no separate and independent suit pending to which these seven defendants are a party. For these reasons, we ask that there be a verdict of acquittal, and we ask leave to file a written motion later, Your Honor.

THE COURT: Any other grounds?

MR. WILSON: That is it, Your Honor. That is it.

THE COURT: Mr. Millsap?

MR. MILLSAP: If Your Honor please, as to the notice of these individuals, Your Honor, the evidence in this proceeding both from the testimony of Mr. McConnell and the television films clearly showed, Your Honor, that Mr. McConnell was reading the restraining order to these defendants, and he has so testified. He requested after reading the restraining order to these defendants, Your Honor, that they leave the bank on Friday, October the 4th, and the testimony of the witnesses in this proceeding is that after he did this, Your Honor, they did not leave the bank at that time. Further, Your Honor, in particular with reference to defendant Louis Ford, Your Honor will recall that in this proceeding at an earlier date Mr. Louis Ford testified on the stand under oath that he had knowledge of the restraining order which had been issued on the day that it had been issued, and that he, on that date, Your Honor, with full knowledge of the restraining order and the fact that it was in effect, and contrary to the advice of counsel, went inside

the bank and violated the order of the Court. Your Honor, Mr. Ford has already admitted under oath on testimony in previous proceedings in this very case that he hadknowledge of the restraining order.

Now, with reference to any of the other matters mentioned by Mr. Witherspoon, as to Your Honor's authority and the correctness of the attachment and the notice to these individuals, Mr. Witherspoon or Mr. Wilson has added nothing to what they have stated before in these proceedings, Your Honor, and nothing they have said with reference to any of these matters have any merit whatsoever.

MR. WILSON: If the Court please, in answer to Mr. Millsap --

MR. WITHERSPOON: Hold it just a minute. Let's see if I can clear it. As I understand it, Your Honor, this proceeding here against these seven people here, testimony adduced inany other proceeding would not be admissible here, at least unless this is put in the record on this case. I wasn't present on that night, but the reading of the restraining order by Mr. McConnell after the act is committed is not notice prior to the commission of the act. Those people had already committed the act at that time, if any act or violation was involved, and that any statement by Mr. Millsap about Louis Ford is not in this record, and he must be convicted, if at all, upon the testimony adduced in this -267- proceeding against him. And there is no evidence here by any witness that Louis Ford knew anything except Mr. Millsap's statement, and Mr. Millsap's statement is not evidence in this yearing, this proceeding. And Mr. Millsap attempts to beg the question about the others, he talks about Ford, but he doesn't talk about the others. What about the others.

Did they know about it? Is there any evidence in this proceeding that the other six had knowledge of it? That element, Your Honor, must be an affirmative element put in the record by the plaintiff.

MR. WILSON: And this is the fact that must be established by the plaintiff.

THE COURT: Anything further, Mr. Millsap?

MR. MILLSAP: No. And Your Honor, it clearly has been established by the plaintiff, and I want to make it clear to these gentlemen, if they are not clear, Your Honor, the only reason I mentioned Louis Ford is Louis Ford, in his testimony, as both of these counsel should recall, stated already in testimony in this proceeding that he had defied the Court order before. I only mention it --

MR. WITHERSPOON: Is that in this proceeding?

MR. MILLSAP: The Judge takes cognizance of any of the -

MR. WITHERSPOON: The Judge has to rule on the evidence in this case. -268-

MR. MILLSAP: I only mention it to point out Mr. Ford's particular capability and his prior knowledge from his testimony. The evidence is clear in this proceeding, Mr. Witherspoon, that Mr. McConnell read it to Mr. Ford, and if you saw the film yesterday, Mr. Witherspoon, you would know that on numerous occasions Mr. Ford was called out in particular by Mr. McConnell, who knew Mr. Ford, and especially requested him to leave the bank, sir.

(Continued on next page) -268A-

MR. WILSON: It is our position that Mr. McConnell's reading of the Court restraining order after these people

were in the bank does not constitute notice to these people, any prior notice to these people at all. There is nothing in this record that shows that Mr. Ford made any statement in regard to whether or not he had any knowledge of these proceedings.

THE COURT: Motion will be overruled.

(The following occurred in open Court)

THE COURT: The motion for directed verdict will be overruled and the Court will give you leave to file your formal motion.

LOUIS FORD,

produced, sworn and examined on behalf of the defendants, testifies as follows:

DIRECT EXAMINATION

QUESTIONS BY MR. WILSON:

Q Will you state your name? A Louis Ford.

Q Where do you live? A 4566 Kensington.

Q Directing your attention to October the 4th, did you have an occasion to be at Jefferson Bank?

A Yes, I did.

Q What time of the day or night did you get there?

A Around four o'clock.

THE FOLLOWING PAGES ARE THE BEST

AVAILABLE.

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

IN THE MATTER OF THE PETITION OF RANDOLPH E. GIBSON, WILLIAM L. CLAY, JAMES MICHAEL, REV. CHARLES PERKINS AND WORDELL T. HART FOR A WRIT OF HABEAS CORPUS	No. 64-C-14 (3)

RETURN TO ORDER TO SHOW CAUSE

Comes now William Boyer, warden of the City Jail of the City of St. Louis, State of Missouri, hereinafter referred to as Respondent, and respectfully makes his return to this Honorable Court's Order to Show Cause why a writ of habeas corpus should not be issued as prayed by the Petitioners herein, accordingly, the Court is advised as follows, to-wit:

I.

Respondent has the herein named Petitioners in his custody at the City Jail of the City of St. Louis, State of Missouri, and

Respondent holds Petitioners in custody and restrains them from their liberty by reason of several Orders of Commitment issued upon him by the Courts of the City of St. Louis, Missouri, on October 23, 1963, issued out of the Circuit Court of the City of St. Louis, State of Missouri, Division 2 (two) thereof, probable cause upheld at preliminary, certified as true by the Clerk of said Circuit Court, and hereto attached and by this reference made a part hereof as if fully set out herein.

II.

Respondent further states this Honorable Court that, in the best information and present belief, no original proceedings

proceedings had before the said St. Louis Circuit Court that have been filed for a record thereon, but that a transcript of said proceedings was prepared by the official court reporter upon request of the petitioners herein, and that a copy of such transcript was thereafter filed, upon stipulation as to its accuracy by the attorneys respectively for the Petitioners and the Circuit Court, in the St. Louis Court of Appeals of the State of Missouri pursuant to a habeas corpus hearing regarding with all subsidiary relevant thereto, that such transcript was later withdrawn from said St. Louis Court of Appeals by the Petitioners herein and filed in the Supreme Court of the State of Missouri in relation to an application for a writ of habeas corpus ad prius from that court; subsequently, such transcript was withdrawn from said Supreme Court by the attorneys of record for the herein Petitioners.

5. That the record of the proceedings had before said Circuit Court, from which said unauthorized orders issued as aforesaid, is the best evidence of facts before the said Circuit Court upon which said aforesaid orders were premised and that such record is comprised of approximately 2,500 pages in said transcript and a plurality of exhibits including written pleadings and sound tapes now on file in the St. Louis Court of Appeals; and as a consequence thereof, the following answers to the allegations of the Petitioners' application herein is made upon a limited knowledge of the true facts, to-wit:

1. Respondent denies the allegations contained within paragraph "1" of the Petitioners' application, and further avers that the said Petitioners is already in custody as hereinafter stated in part I of this answer;

2. Respondent denies that part of the allegations contained within paragraph "2" of the Petitioners' application, claiming knowledge of Petitioners is "unlawful" and that part

respondent as pleaded to "Count Two [illegible]," and denies the
remainder of said paragraph;

3. Respondent has no information sufficient to form a belief as to the truth of the allegations contained within paragraph "IIX" of the application, and therefore denies same; and further answers that Petitioners' contention has been adjudged improper by the St. Louis County Circuit and by the Supreme Court of the State of Missouri;

4. Respondent has no information sufficient to form a belief as to the truth of the allegations contained within paragraph "IV" of the Petitioners' application, and therefore denies same;

5. Respondent has no information sufficient to form a belief as to the truth of the allegations of fact contained within paragraph "V" of the Petitioners' application, and therefore denies same; and avers further answer as follows, to-wit:

6. That sub-paragraph "A" raises no substantial federal Constitutional question appropriate for decision by the courts of the United States since the highest court of the State of Missouri has decided that upon the facts as developed by the true record of the Circuit Court proceedings, the Lake of the Ozarks Land Law lawfully applied further, that such application by the highest court of this State is reasonable and therefore not a denial of the process of law as guaranteed by the Federal Bevenue Constitution; and such reasonable construction is applied equally to all persons within the State;

b. That sub-paragraph "a" relies on substantial United States Constitutional question appropriate for decision by the courts of the United States since the highest court of the State of Missouri has construed the constitutionality of the statutes of Missouri and the Supreme Court rules of Missouri relating to indemnity bonds in injunction suits adverse to the claim made by the petitioners, by the denial of ninety applications for a writ of habeas corpus for release from the commitments herein contested;

c. That sub-paragraph "b" relies on substantial United States Constitutional question appropriate for decision by the courts of the United States since such question has never ruled in a prior manner and presented for decision to the highest court of the State of Missouri; the petitioners cannot overcome such condition for decision for the first time in United States courts;

d. That sub-paragraph "c" relies on substantial United States Constitutional question appropriate for

decision by the courts of the United States since such
time has been reasonably and fairly decided by the
highest court of the State of Missouri, adversely to
Petitioners;

5. That subparagraph "6" raises no substantial
federal statute constitutional question appropriate for
decision by the courts of the United States since each
claim of denial of review of the institution of condem-
nation through "appeal" procedure alleging a denial of
procedural rights not guaranteed by the United States
Constitution and Petitioners, having failed to prosecute
and urge such claimed rights in the Courts of the State
of Missouri, cannot now, for the first time, raise such
question for Federal determination;

6. That subparagraph "7" raises no substantial
United States Constitutional question appropriate for
decision by the courts of the United States since the
invalidity of the issuance of the temporary restraining
order, construed by those Petitioners to be applicable
to each of them, as this hearing, made permanent by
the Circuit Court of the City of St. Louis, Division
No. 5, thereof through the device of permanent injunction
and final judgment, from which final judgment Petitioners
are presently pursuing their right of necessary appeal
upon the laws of the State of Missouri and as a conse-
quence thereof, Petitioners have not exhausted such
remedies presently afforded them under the laws of the
State of Missouri, and no final judgment of said State
has been rendered further, such Constitutional question

law and therefore been presented for decision by the highest court of this State and therefore cannot be presented for decision before the courts of the United States as a claim of Constitutional infringement;

b. That subparagraph "a" relies on substantial United States Constitutional question appropriate for decision by the courts of the United States since the highest court of the State of Missouri has decided that such fines and sentences are lawfully within the provisions and Constitution of the State of Missouri and that such decision of the State's highest court is unreviewable by reason further, that Petitioners have failed to present, urge and preserve the claim of violation of the First, Sixth, Eighth and Fourteenth Amendments of the Constitution of the United States in the highest court of the State of Missouri;

c. That subparagraph "a" relies on substantial United States Constitutional question appropriate for decision by the courts of the United States since Petitioners make no claim of a violation of the United States Constitution

[illegible] [illegible] any specific enumeration of such Constitution-
tion or of the Constitution of the State of Missouri by
the highest court of the State of Missouri; further,
Petitioners do not particularize the "[illegible]"
to which they claim to have been [illegible]

III.

Respondent, Circuit Attorney of the Kansas City Jail, on his
own information and belief, Petitioners were tried for [illegible]
contempt in the Circuit Court of the City of St. Louis and were
convicted thereof; that Petitioners filed an application for writs of
habeas corpus in the St. Louis Court of Appeals which was granted,
and that evidence was taken thereon and a hearing had; that the
St. Louis Court of Appeals quashed the writ, remanded Petitioners to
the custody of Respondent and issued its opinion on the matters that
the Petitioners filed an application for writ of habeas corpus in the
Supreme Court of Missouri and filed therein the return of the writ,
including a copy of the transcript of the proceedings had before the
Circuit Court; that the Supreme Court of Missouri denied their
application for writ of habeas corpus and adopted for its opinion the
opinion [illegible] of the St. Louis Court of Appeals, except
a concluding part of the opinion of the St. Louis Court of Appeals
above referred to and a copy of the decision of the Supreme Court of
Missouri found in Petitioners' application are attached hereto and
are incorporated by reference as if fully set out herein.

WHEREFORE, Respondent prays this Honorable Court to dismiss
Petitioners' application for writs of habeas corpus and to discharge
the rule nisi to show cause.

[illegible] Keeper, Warden
City Jail of the City of
St. Louis, Missouri
Respondent.

STATE OF MISSOURI }
CITY OF ST. LOUIS } ss.

William Bongar, of lawful age, being first duly sworn, upon his oath states that the matters and things stated in the above and foregoing Return to Order to Show Cause are true to the best of his information and belief.

William Bongar

Subscribed and sworn to before me this 18th day of February, 1964.

Notary Public

My commission expires: _____

Thos. J. Kaiser,
City Counselor

Eugene F. Feldmann,
Associate City Counselor

Thomas B. Kelleher, Jr.,
Associate City Counselor

Attorneys for Respondents
William Bongar, Warden
City Jail of the City of
St. Louis, Missouri

CERTIFICATE OF SERVICE

Copy of the above Petition to Order to Show Cause was served this 19th day of February, 1986, by depositing, postage prepaid, in the United States Mail, to Clyde E. Cahill, Esq., James H. Pudlowski, Esq., and Robert E. Wilson, Jr., Esq., Attorneys for Petitioners in Case 86-C-32 (D); Robert L. Williamson, Esq., Charles R. Oldham, Esq., and Joseph B. McDuffie, Esq., Attorneys for Petitioners in Case 86-C-33 (D); and Robert E. Wilson, Jr., Esq., Robert L. Williamson, Esq., and Spencer E. Young, Esq., in Case 86-C-34 (D), to the addresses of record.

Eugene F. Freeman
Associate City Counselor

Timothy E. McCarron, Jr.
Assistant City Counselor

Attorneys for Respondent
234 City Hall
St. Louis, Missouri 63103

LUCE, FORWARD, HAMILTON & SCRIPPS
SUITE 1616 SAN DIEGO TRUST & SAVINGS BUILDING
SAN DIEGO 1, CALIFORNIA
PHONE BE-LMONT 0-0344

Attorneys for PLAINTIFF

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

SAN DIEGO GAS & ELECTRIC COMPANY, a California corporation,

Plaintiff

vs.

SAN DIEGO CONGRESS OF RACIAL EQUALITY, an unincorporated association affiliated with the CONGRESS OF RACIAL EQUALITY; CONGRESS OF RACIAL EQUALITY, an unincorporated association; HAROLD K. BROWN, individually and as a member of said unincorporated associations and as Chairman of SAN DIEGO CONGRESS OF RACIAL EQUALITY, an unincorporated association; RALPH SHACKLEFORD, individually and as Public Relations Chairman, San Diego Chapter of said unincorporaed association; JOHN W. PORTER, individually and as a member of the said unincorporated associations; JAMES FARMER, individually and as National Director of said unincorporated association; RICHARD HALEY, Assistant to said National Director of said unincorporated association; JAMES McCANN, individually and as National Director of said unincorporated association; CHET DUNCAN, individually and as Regional Field Director of said unincorporated association; FRED WINSTON, individually and as a member of said unincorporated associations; GEORGE L. STEVENS, individually and as a member of said unincorporated associations; ROBERT RUSSELL, individually and as a member of said unincorporated associations and as Chairman of CONGRESS OF RACIAL EQUALITY EMPLOYMENT COMMITTEE; JAMES BROWN, JR., individually and as a member of said unincorporated associations; MURIEL BRODSHATZER, individually and as a member of said unincorporated associations; ROBERT A. WARD, individually and as a member of said unincorporated associations; PEGGY FINCH, individually and as a member of said unincorporated associations; JAMES E. BROWN, JR., individually and as a member of said unincorporated associations; ISIR B. FOSTER individually and as a member of said unincorporated associations; DAVID KROLL, individually and as a member of said unincorporated associations; STANLEY CROCKETT,

NO. _____

SUMMONS

individually and as a member of said unincorporated associations; DOE ONE to DOE ONE HUNDRED (inclusive of all intervening numbers, as though each such Doe was separately and severally designated); DOE I ASSOCIATION to DOE X ASSOCIATION (inclusive of all intervening numbers as though each such Doe Association was separately and severally designated), each an unincorporated association; DOE I CORPORATION to DOE V CORPORATION (inclusive of all intervening numbers as though each such Doe Corporation was separately and severally designated); DOE I PARTNERSHIP To DOE V PARTNERSHIP (inclusive of all intervening numbers as though each such Doe Partnership was separately and severally designated); MRS. ROBERT RUSSELL;

Defendants.

THE PEOPLE OF THE STATE OF CALIFORNIA SEND GREETINGS TO:

JOHN W. PORTER, individually and as a member of the hereinafter named unincorporated associations;

HAROLD K. BROWN, individually and as a member of the hereinafter named unincorporated associations and as Chairman of SAN DIEGO CONGRESS OF RACIAL EQUALITY, an unincorporated association;

CONGRESS OF RACIAL EQUALITY, an unincorporated association;

JAMES FARMER, individually and as National Director of said unincorporated association;

RICHARD HALEY, Assistant to said National Director of said unincorporated association;

JAMES McCANE, individually and as National Director of said unincorporated association;

CHET DUNCAN, individually and as Regional Field Director of said unincorporated association;

SAN DIEGO CONGRESS OF RACIAL EQUALITY, an unincorporated association affiliated with the CONGRESS OF RACIAL EQUALITY;

RALPH SHACKLEFORD, individually and as Public Relations Chairman, San Diego Chapter of said unincorporated association;

FRED WINSTON, individually and as a member of said unincorporated associations;

GEORGE STEVENS, individually and as a member of said

LAW OFFICES
LUCE, FORWARD, HAMILTON & SCRIPPS
7765 GIRARD AVENUE, SUITE 104
LA JOLLA, CALIFORNIA
PHONE 459-4011

Attorneys for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

SAN DIEGO GAS & ELECTRIC [illegible],
a California Corporation,

Plaintiff,

-vs-

SAN DIEGO CONGRESS OF [illegible], an unincorporated association affiliated with the [illegible] CONGRESS OF [illegible], an unincorporated association; [illegible], individually and as a member of said unincorporated associations and as [illegible] DIEGO CONGRESS OF RACIAL [illegible], an unincorporated association, et al,

Defendants.

DECLARATION OF

DAVID P. CURTIS

DAVID CURTIS declares:

That he was at all times herein mentioned employed as Claims Agent for the San Diego Gas & Electric Company.

The main office of the San Diego Gas & Electric Company is located at 861 Sixth Avenue in the City of San Diego, and is known as the Electric Building. This building is located on the south corner of Sixth Avenue and [illegible] Street and consists of eight normal office building size floors, together with a basement level.

The building may be entered through two sets of double doors opening from Sixth Avenue. Exhibit A attached hereto and by this reference made a part hereof, is a true and accurate scale

drawing of the Sixth Avenue building entrance and interior lobby area showing the double doors to the right side of the lobby upon entering leading to the office for payment of bills and transaction of other business by members of the public with the San Diego Gas & Electric Company. The drawing shows the elevators which are directly across from the two sets of double doors leading from Sixth Avenue and also shows double doors to the left of the entrance. These doors lead into a business area inter-connecting with the above mentioned business area by a continuation of the lobby and counter arrangement to the area behind the elevators.

The Electric Building may also be entered from a fire door located in the southeast area of the business service area aforementioned, and by means of a "side entrance" comprised of double doors opening into the building from K Street. The sidewalk outside the Sixth Avenue entrance is approximately twelve feet in width and outside the K Street entrance is approximately fourteen feet in width. The fire door opens from the business-service-lobby area into the company's Seventh Avenue garage. This garage is entered by means of two entrances suitable for vehicular traffic leaving Seventh Avenue. One of these entrances is normally used as an exit. The fire door is located in the westerly wall of the interior garage area. The fire door opens from the lobby-business service area into a narrow passage; this passage is formed by the area left between certain company equipment and a parking space. This passage is approximately four to five feet in width, leading into the open garage. Reference is made to said Exhibit A. The passage is not enclosed, except by the equipment and presence of a parked car.

Persons whose acts are complained of herein will be called "pickets". At all times herein mentioned the pickets purported to be acting on behalf of the Congress of Racial Equality and the San Diego Congress of Racial Equality, together with officials of said

unincorporated associations. On Monday, November 18, 1963, approximately 22 to 25 pickets carried on demonstrations outside the Sixth Avenue entrance to the Electric Building. The pickets walked back and forth on the sidewalk area, carrying signs stating "Don't Fire Just Hire" - "Equal Rates; Equal Employment Opportunity" - "Four Hundred Years of Brainwashing" and other slogans.

At approximately 4:20 p.m. on November 18, 1963, eighteen or more pickets entered the inner lobby area near the place designated for payment of bills by company's consumers and sat down on the floor. Shortly after 5:00 o'clock p.m. this group got up and left the building. The names of some of these pickets as known to your declarant are Harold K. Brown, James Brown and Mr. and Mrs. Robert Russell, all defendants herein.

On Tuesday, November 19, 1963, at about 4:00 o'clock p.m., approximately 25 pickets entered the lobby area between the elevators and the street entrance. These pickets sat on the floor in groups, leaving aisles between them through which persons could pass. The names of some of these pickets as known to your declarant are Harold K. Brown, James Brown and Mr. and Mrs. Robert Russell, all defendants herein. Approximately 8 to 10 pickets remained outside the entrance and continued their picketing demonstration with signs. The pickets left the lobby area at 5:15 p.m. on said day.

On Wednesday, November 20, 1963, approximately 15 pickets were demonstrating with signs within the sidewalk area adjacent to the Sixth Avenue entrance. This activity was carried on during the afternoon. At 4:00 o'clock p.m. approximately 27 to 29 pickets sat down on the floor in the lobby area between the elevators and the front entrance. Approximately 7 pickets were sitting in front of the Sixth Avenue entrance doors; approximately 8 pickets were sitting in front of the doors leading to the office for payments of bills and transaction of other business service; approximately 8

pickets were sitting in front of the elevator area, and approximately 6 pickets were sitting in the vicinity of the second floor stairway, with two of the pickets sitting on the first step, leaving very little space through which persons could pass in descending and ascending the steps. Generally the pickets appeared to be sitting closer together, making it more difficult for employees to leave the building. Some were half lying and half sitting, leaning on their hands out to their sides, making it more difficult for employees and other persons to pass. Pickets in front of the door leading to the area for payment of bills there formed in a double row so that customers had to move around one line of sitters in order to pass through. Upon entering the Sixth Avenue entrance it appeared thatthe said door was completely blocked, and it was only after further observation that it could be seen an opening was available by walking through a "pass". The names of some of these pickets as known to your declarant are Harold K. Brown, James Brown and Mr. and Mrs. Robert Russell, all defendants herein. The pickets left the lobby area at 5:30 p.m.

On Thursday, November 21, 1963, picketing demonstrations were carried on within the sidewalk area throughout the day.

At 4:00 o'clock p.m., or shortly thereafter, the pickets again commenced sitin demonstrations. Pickets were even closer than on Wednesday evening. Company employees had even more difficulty in trying to avoid contact with the pickets sitting on the floor. Approximately eighteen pickets were sitting in front of and adjacent to the Sixth Avenue entry doors, in a double row. The pickets were from six to eighteen inches apart, and the second row was formed very close to the doors themselves. The defendant Harold Brown was sitting in front of the second floor stairway with his elbows leaning on the first step. During the time of picketing he leaned back, extending his upper arms laterally so as to more nearly block the stairway. Approximately seven pickets

were sitting on the floor in front of the three elevators, leaving spaces from six to eighteen inches between their bodies. Approximately six pickets were located in front of the doors leading to the place for payment of bills so as almost to completely block the way. One female picket seated on the floor intentionally put her arm out so as to occupy an area otherwise large enough for persons to pass, making passage more difficult. Your declarant is informed and believes and therefore alleges that the said picket was the defendant Mrs. Robert Russell. The pickets left the lobby area after 6:00 p.m. The names of some of these pickets as known to your declarant are Harold K. Brown, James Brown and Mr. and Mrs. Robert Russell, all defendants herein.

During the sit-in demonstrations of November 20 and November 21, persons passing through the lobby area had difficulty in finding space within which to walk without bumping into or stepping on the pickets, and were required to hesitate and find detour routes. Persons entering and leaving the lobby area were frequently observed to become annoyed and occasionally upset at the conditions prevailing.

Shortly before 5:00 p.m. on Thursday, approximately four of the pickets sat down on the floor area in the passageway leading from the fire door into the Seventh Avenue garage, and at least one of these pickets was so seated as to be in the path of the door as it opened from the lobby. Approximately 24 inches of space was left between the pickets for passage once a person went through the door.

Your declarant is informed and believes and therefore alleges that from 5:00 to 6:00 p.m. pickets were present outside the doors of the E Street entrance of the Electric Building. In the entrance of the fire door and the E street entrance these pickets remained until after 6:00 o'clock p.m. and the time when employees of the San Diego Gas & Electric Company were leaving the building.

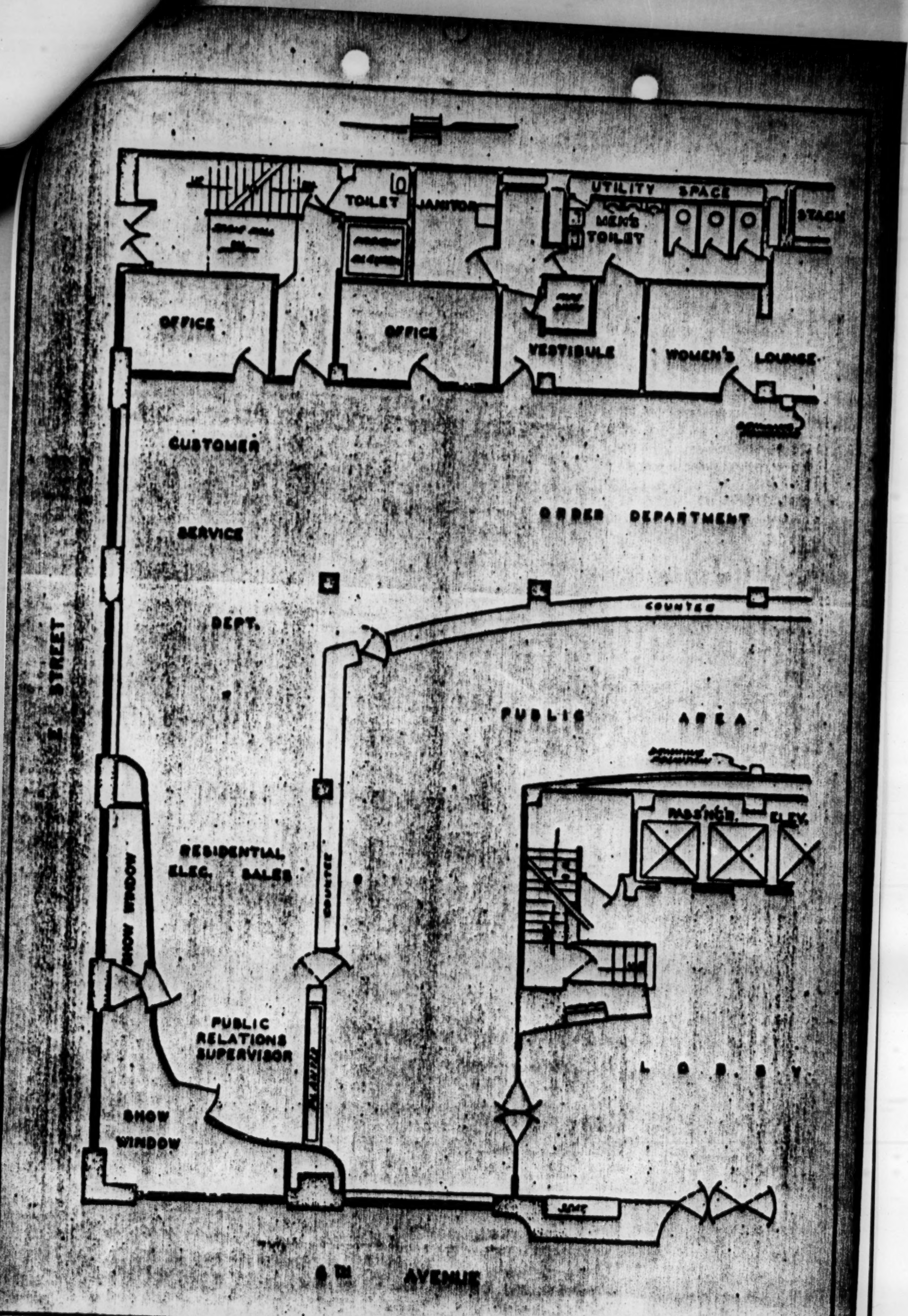
On Friday, November 22, 1963, pickets were again present in and about the building, but upon the arrival of news as to the

assassination of President John F. Kennedy the pickets dispersed and left the premises and sidewalk area of the Electric Building.

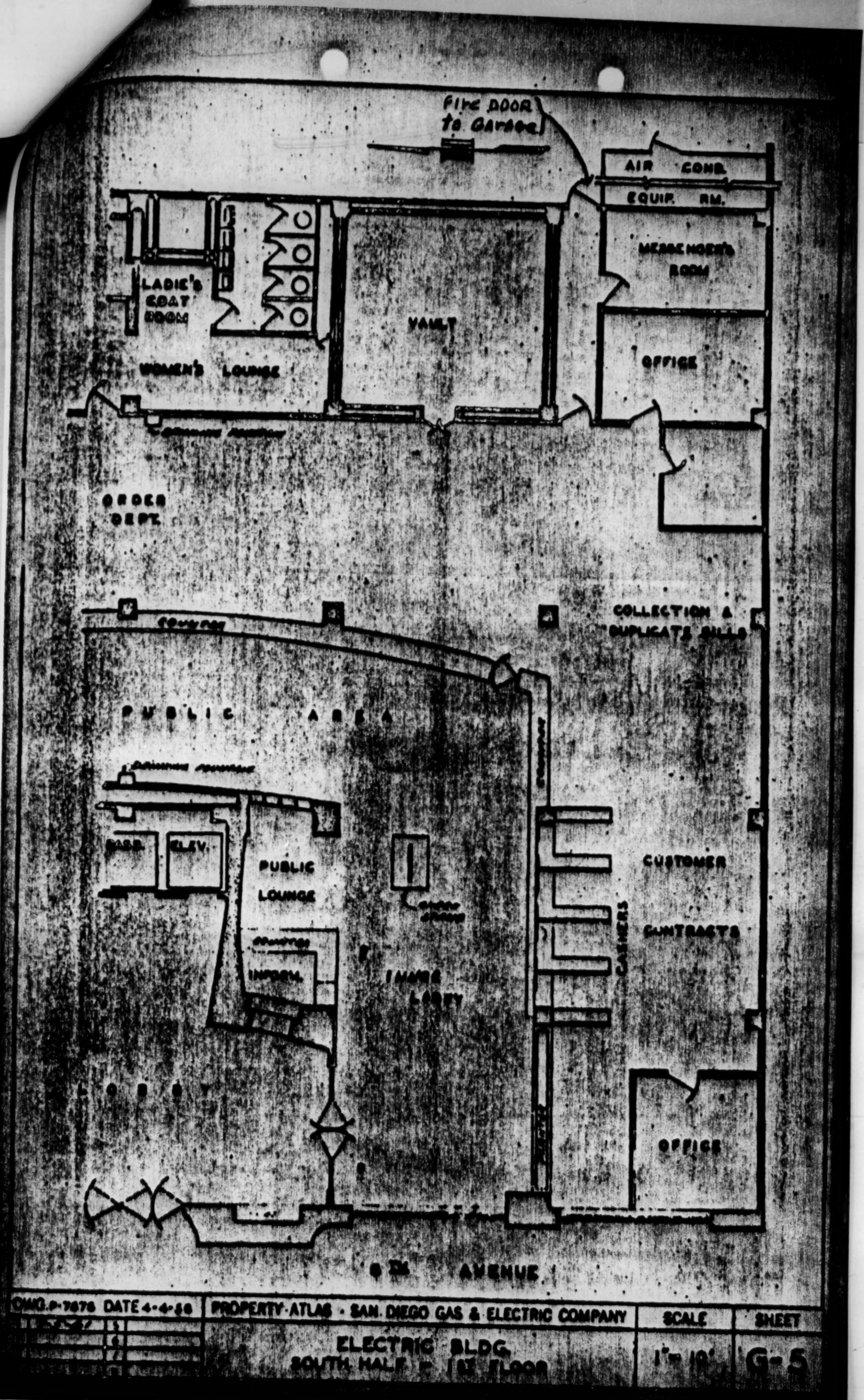
I hereby certify under penalty of perjury that the foregoing is true and correct, except as to the matters therein stated on information and belief, and as to those matters I believe it to be true. (C.C.P. 2015.5)

Executed at San Diego, California this __ day of December, 1963.

David F. Curtis



DWG. P-7878 DATE 4-3-58	PROPERTY ATLAS · SAN DIEGO GAS & ELECTRIC COMPANY	SCALE	SHEET
	ELECTRIC BLDG. NORTH HALF — 1ST FLOOR	1" = 10'	G-4



OMG.P-7676 DATE 4-4-58	PROPERTY ATLAS · SAN DIEGO GAS & ELECTRIC COMPANY	SCALE	SHEET
	ELECTRIC BLDG. SOUTH HALF - 1ST FLOOR	1"= 10'	G-5

— Appel Term - Woo term

John Salverberg
MFY

Steve Nayler
Berger - Cora
on 2036 - get a reversal
on 722 - get a modification

minutes of sentencing, to be gotten by 10/16/66
+ complaint also

Legal Notice

Name	Address
Bernard D. O'Boyle, Jr., also known as Peter O'Boyle	Crow Hill Road, Mount Kisco, N. Y.
Robert G. O'Brien, also known as Robert O'Brien	R. D. No. 1, Tuxedo Park, N. Y.
[illegible] Leach O'Connor, formerly [illegible] Elizabeth Lynch	364 Post Hill Road, Scarsdale, N. Y.
Paul Frederic Herrstein	11 Ridge Road, Scarsdale, N. Y.
Thomas M. Phelan	R. D. 2, Wheeler Avenue, Peekskill, N. Y.
Percy William Pickalls	436 Benedict Avenue, Tarrytown, N. Y.
Beatrice M. Rae (Motion, Massachusetts)	77 Colonial Parkway North, Yonkers, N. Y.
Robert Keating Raynor, also known as Robert Keating Joseph Raynor	28 William Street, Mount Vernon, N. Y.
Coleman Robert Reap, also known as Coleman Reap and Robert Coleman Reap	17 Ridge Avenue, Spring Valley, N. Y.
Lawrence Robert Ricciardi	811 Bronx River Road, Yonkers, N. Y.
Warren W. Rice, Jr., also known as Warren Rice, Jr.	South Drive, R. F. D. No. 4, Brewster, N. Y.
Stephen Richard Ripps	16 Hemion Road, Suffern, N. Y., Apt. 2-B
Westervelt Kirkland Taylor, also known as W. Kirkland Taylor	30 Broad Street, Flshkill, N. Y.
Jerome Eliot Weinstein	55 Barnard Road, New Rochelle, N. Y.
Andrew Russell Willing	130 Forster Avenue, Mount Vernon, N. Y.

APPELLATE TERM — SUPREME COURT — FIRST DEPARTMENT
(Room 402, Fourth Floor)

For the hearing of appeals from the New York City Civil Court and the New York City Criminal Court.

Before Steuer, J.P.; Hofstadter and Tilzer, JJ.

The next term of this court will be held on November 7, 1966.

The calendar of appeals will be called November 4, 1966, at 12 noon.

All notices of arguments must be made returnable on November 7, 1966.

Cases or returns on appeal or appendices, briefs and notices of argument must conform to the new rules of the Appellate Term, and as amended, effective September 1, 1966.

Returns or records on appeal or appendices from the New York City Civil Court must be filed with the clerk of the Appellate Term on or before Wednesday, October 26, 1966.

Returns or records on appeal from the New York City Criminal Court must be filed with the clerk of the Appellate Term on or before Wednesday, October 26, 1966.

The Civil Court shall [illegible]

communications will be accepted from counsel except by express permission of the court.

Notice to the Bar: Rule III of the Appellate Term Rules, prescribing the time for the service and filing of briefs by appellants and respondents, will be strictly enforced. No application for enlargement of time will be granted, except upon good cause shown.

RICHARD E. RIVERS, Clerk

[illegible] the Rules also shall be [illegible] x 11 inches, specified in Rule [illegible]. Where so typed or otherwise reproduced all copies must be on a good grade of at least twenty-pound, white, opaque, unglazed paper, providing a permanent, legible black on white copy (Judicial Conference Directive, N. Y. L. J., August 22, 1966, p. 1).

Whenever service is made through the post office, such service must comply with Rule 2103 (b) (3), C.P.L.R., and three days prior to the last day designated herein.

Proof of service must be shown on each original.

Notices of argument by an appellant must be served on or before Tuesday, October 25, 1966, and filed with the clerk of the Appellate Term on or before Wednesday, October 26, 1966.

Notices of argument by a respondent must be served on or before Tuesday, October 18, 1966, and filed with the clerk of the Appellate Term on or before Tuesday, October 18, 1966.

Appellants' briefs must be served and filed with the clerk of the Appellate Term on or before Wednesday, October 26, 1966.

Respondents' briefs must be served and filed with the clerk of the Appellate Term on or before Thursday, November 3, 1966.

Reply briefs, if any, must be served and filed with the clerk of the Appellate Term before 10 A.M. on Monday, November 7, 1966.

All copies of returns or records on appeal or appendices must conform to the original and all must be clearly legible.

At any time before the call of the calendar, the parties, where the papers and briefs have been served and filed, may submit without argument on written stipulation.

The original and two copies of the brief shall be filed on appeals from the New York City Civil Court and from the New York City Criminal Court and one copy on the other.

Briefs must be endorsed with the calendar number of the appeal on the upper left hand corner along with the name of counsel either arguing or submitting endorsed on the right upper hand corner thereon.

Briefs of counsel, where reference therein is made to testimony given upon the trial, must give the number of the folio or the number of the page in the record.

If the appellant's brief fails to comply with this rule the appeal may be dismissed. If the respondent's brief is deficient in this respect, the appeal may be considered on the appellant's brief alone.

After submission of arguments or cases and submission of briefs, no

LUCE, FORWARD, HAMILTON & SCRIPPS
[illegible]
SAN DIEGO 1, CALIFORNIA
[illegible]

Attorneys for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

SAN DIEGO GAS & ELECTRIC COMPANY, a California corporation,

Plaintiff

-vs-

SAN DIEGO CONGRESS OF RACIAL EQUALITY, an unincorporated association affiliated with the CONGRESS OF RACIAL EQUALITY; CONGRESS OF RACIAL EQUALITY an unincorporated association; HAROLD K. BROWN, individually and as a member of said unincorporated associations and as Chairman of SAN DIEGO CONGRESS OF RACIAL EQUALITY, an unincorporated association; RALPH SHACKLEFORD, individually and as Public Relations Chairman, San Diego Chapter of said unincorporated association; et al.

Defendants.

NO. 28 1152

DECLARATION OF

FRANK P. WILLIAMS

FRANK P. WILLIAMS declares:

That he was at all times herein mentioned employed as Staff Assistant, Administrative Functions, for the San Diego Gas & Electric Company.

The main office of the San Diego Gas & Electric Company is located at 861 Sixth Avenue in the City of San Diego, and is known as the Electric Building. This building is located on the south corner of Sixth Avenue and E Street and consists of eight normal office building size floors, together with a basement level.

The building may be entered through two sets of double doors opening from Sixth Avenue. Reference is made to Exhibit A

attached to the Declaration of David F. Curtis and by this reference made a part hereof, is a true and accurate scale drawing of the Sixth Avenue building entrance and interior lobby area showing the double doors to the right side of the lobby upon entering leading to the office for payment of bills and transaction of other business by members of the public with the San Diego Gas & Electric Company. The drawing shows the elevators which are directly across from the two sets of double doors leading from Sixth Avenue and also shows double doors to the left of the entrance. These doors lead into a business area inter-connecting with the above mentioned business area by a continuation of the lobby and counter arrangement to the area behind the elevators.

The Electric Building may also be entered from a fire door located in the southeast area of the business service area aforementioned, and by means of a "side entrance" comprised of double doors opening into the building from E Street. The sidewalk outside the Sixth Avenue entrance is approximately twelve feet in width and outside the E Street entrance is approximately fourteen feet in width. The fire door opens from the business-service-lobby area into the company's Seventh Avenue garage. This garage is entered by means of two entrances suitable for vehicular traffic leaving Seventh Avenue. One of these entrances is normally used as an exit. The fire door is located in the westerly wall of the interior garage area. The fire door opens from the lobby-business service area into a narrow passage; this passage is formed by the area left between certain company equipment and a parking space. This passage is approximately four to five feet in width, leading into the open garage. Reference is made to said Exhibit A. The passage is not enclosed, except by the equipment and presence of a parked car.

Persons whose acts are complained of herein will be called "pickets". At all times herein mentioned the pickets purported to

be acting on behalf of the Congress of Racial Equality and the San Diego Congress of Racial Equality, together with officials of said unincorporated associations. On Monday, November 18, 1963, approximately 22 to 25 pickets carried on demonstrations outside the Sixth Avenue entrance to the Electric Building. The pickets walked back and forth on the sidewalk area, carrying signs stating "Don't Fire Just Hire" - "Equal Rates; Equal Employment Opportunity" - "Four Hundred Years of Brainwashing" and other slogans.

At approximately 4:20 p.m. on November 18, 1963, eighteen or more pickets entered the inner lobby area near the place designated for payment of bills by company's consumers and sat down on the floor. Shortly after 5:00 p'clock p.m. this group got up and left the building. The names of some of these pickets as known to your declarant are Harold K. Brown, James Brown and Mr. and Mrs. Robert Russell, all defendants herein.

On Tuesday, November 19, 1963, at about 4:00 p'clock p.m. approximately 23 pickets entered the lobby area between the elevators and the street entrance. These pickets sat on the floor in groups, leaving aisles between them through which persons could pass. The names of some of these pickets as known to your declarant are Harold K. Brown, James Brown and Mr. and Mrs. Robert Russell, all defendants herein. Approximately eight to ten pickets remained outside the entrance and continued their picketing demonstration with signs. The pickets left the lobby area at 5:15 p.m. on said day.

On Wednesday, November 20, 1963, approximately fifteen pickets were demonstrating with signs within the sidewalk area adjacent to the Sixth Avenue entrance. This activity was carried on during the afternoon. At 4:00 o'clock p.m. approximately 27 to 29 pickets sat down on the floor in the lobby area between the elevators and the front entrance. Approximately seven pickets were sitting in front of the Sixth Avenue entrance doors; approximately

eight pickets were sitting in front of the doors leading to the office for payment of bills and transaction of other business service; approximately eight pickets were sitting in front of the elevator area, and approximately six pickets were sitting in the vicinity of the second floor stairway, with two of the pickets sitting on the first step, leaving very little space through which persons could pass in descending and ascending the steps. Generally the pickets appeared to be sitting closer together, making it more difficult for employees to leave the building. Some were half lying and half sitting, leaning on their hands out to their sides, making it more difficult for employees and other persons to pass. Pickets in front of the door leading to the area for payment of bills there formed in a double row so that customers had to move around one line of sitters in order to pass through. Upon entering the Sixth Avenue entrance it appeared that the said door was completely blocked, and it was only after further observation that it could be seen an opening was available by walking through a "mass". The names of some of these pickets as known to your declarant are Harold K. Brown, James Brown and Mr. and Mrs. Robert Russell, all defendants herein. The pickets left the lobby area at 5:30 p.m.

On Thursday, November 21, 1963, picketing demonstrations were carried on within the sidewalk area throughout the day.

At 4:00 o'clock p.m., or shortly thereafter, the pickets again commenced sit-in demonstrations. Pickets were even closer than on Wednesday evening. Company employees had even more difficulty in trying to avoid contact with the pickets sitting on the floor. Approximately eighteen pickets were sitting in front of and adjacent to the Sixth Avenue entry doors, in a double row. The pickets were from six to eighteen inches apart, and the second row was formed very close to the doors themselves. The defendant Harold Brown was sitting in front of the second floor stairway with his elbows leaning on the first step. During the time of

picketing he leaned back, extending his upper arms laterally so as to more nearly block the stairway. Approximately seven pickets were sitting on the floor in front of the three elevators, leaving spaces from six to eighteen inches between their bodies. Approximately six pickets were located in front of the doors leading to the place for payment of bills so as almost to completely block the way. One female picket seated on the floor intentionally put her arm out so as to occupy an area otherwise large enough for persons to pass, making passage more difficult. Your declarant is informed and believes and therefore alleges that the said picket was the defendant Mrs. Robert Russell. The pickets left the lobby area after 6:00 p.m.

During the sit-in demonstrations of November 20 and November 21, persons passing through the lobby area had difficulty in finding space within which to walk without bumping into or stepping on the pickets, and were required to hesitate and find detour routes. Persons entering and leaving the lobby area were frequently observed to become annoyed and occasionally upset at the conditions prevailing.

On Friday, November 22, 1963, pickets were again present in and about the building, but upon the arrival of news as to the assassination of President John F. Kennedy the pickets dispersed and left the premises and sidewalk area of the Electric Building.

I hereby certify under penalty of perjury that the foregoing is true and correct, except as to matters therein stated upon information and belief, and as to these matters I believe it to be true. (C.C.P. 2015.5).

Executed at San Diego, California this ___ day of December, 1963.

Frank P. Belcher

FRANK P. BELCHER

LUCE, FORWARD, HAMILTON & SCRIPPS
SUITE 1200 SAN DIEGO TRUST & SAVINGS BUILDING
SAN DIEGO 1, CALIFORNIA
PHONE BE-LMONT 9-9244

Attorneys for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

SAN DIEGO GAS & ELECTRIC COMPANY, a California corporation,

Plaintiff

-vs-

SAN DIEGO CONGRESS OF RACIAL EQUALITY, an unincorporated association affiliated with the CONGRESS OF RACIAL EQUALITY; CONGRESS OF RACIAL EQUALITY an unincorporated association; HAROLD K. BROWN, individually and as a member of said unincorporated associations and as Chairman of SAN DIEGO CONGRESS OF RACIAL EQUALITY, an unincorporatad association; et al.

Defendants.

No. 28432

SUPPLEMENTAL DECLARATION OF DAVID F. CURTIS

DAVID F. CURTIS declares:

That he was at all times herein mentioned employed as Claim Agent for the San Diego Gas & Electric Company.

Persons whose acts are alleged herein as involving demonstrations such as walking back and forth with signs, sitting down in groups and others will be called "pickets". At all times herein mentioned the pickets were purported to be acting for and on behalf of the Congress of Racial Equality and the San Diego Congress of Racial Equality.

On December 23, 1963, pickets were conducting demonstrations substantially similar to those which took place on

November 21, 1963. Reference is made to the Declaration of David F. Curtis on file herein.

On or about said date in December the pickets in their demonstrations have so formed themselves as to block substantially various of the doorways of the Electric Building at 861 Sixth Avenue, San Diego, California, and to impede the passage of employees and other persons through the said doorways. The pickets have so blocked and impeded the passage through said doorways by placing their bodies so close together or by interlocking their arms as to make passage impossible, or both.

I certify under penalty of perjury that the foregoing is true and correct, except as to matters therein stated upon information and belief, as as to those matters I believe it to be true. (C.C.P. 2015.5)

Executed at San Diego, California this __day of December, 1963.

DAVID F. CURTIS

LUCE, FORWARD, HAMILTON & SCRIPPS
SUITE 1220 SAN DIEGO TRUST & SAVINGS BUILDING
SAN DIEGO 1, CALIFORNIA
PHONE BE-LMONT 9-8244

Attorneys for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

SAN DIEGO GAS & ELECTRIC COMPANY, a California corporation,

Plaintiff

-vs-

SAN DIEGO CONGRESS OF RACIAL EQUALITY, an unincorporated association affiliated with the CONGRESS OF RACIAL EQUALITY; CONGRESS OF RACIAL EQUALITY an unincorporated association; HAROLD K. BROWN, individually and as a member of said unincorporated associations and as Chairman of SAN DIEGO CONGRESS OF RACIAL EQUALITY, an unincorporated association; et al.

Defendants.

NO. 28132

TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE

Upon reading the verified Complaint on file herein and the affidavits in support thereof filed concurrently therewith, and it appearing therefrom to the Court that this is a proper instance for the issuance of a temporary restraining order and order to show cause, and that great and irreparable injury would result to plaintiff herein before the matter could be heard on notice, and good cause appearing therefor,

IT IS HEREBY ORDERED that defendants herein, and each of them, be and appear before the above entitled Court, in Department 1 thereof, on the 2nd day of January 1964, at 10 a.m. of said day, then and there to show cause,

if any they or any of them have, why a preliminary injunction should not be made and entered herein ordering:

1. That the defendants and each of them and their members, agents, employees, representatives, officers, organizers, attorneys, and all persons in active concert or participation with them, be permanently enjoined and restrained:

(a) From picketing, standing, sitting, loitering, gathering, lying down, assembling, marching, parading, walking, stopping or stationing, placing or maintaining any pickets or other persons at, near or about or within 200 yards in any direction from plaintiff's places of business, buildings, plants, facilities and properties, or in the street or highway, public or private, the use of which is necessary for ingress to or egress from said places of business, buildings, plants, facilities and properties or on any easements granted to plaintiff or elsewhere at or near or in the vicinity of plaintiff's places of business, buildings, plants, facilities and properties; provided, however, that this shall not be construed to limit in any way the right of any person to enter or leave any of plaintiff's places of business, buildings, plants, facilities or properties in the course of business with plaintiff.

(b) From obstructing, intimidating, threatening, molesting, annoying, assaulting, maintaining menacing attitudes, or in any manner coercing any of plaintiff's employees, agents, representatives, visitors or invitees or the employees of customers, suppliers or others doing or attempting to do business with plaintiff.

(c) From causing or inducing or attempting to cause or induce by word or act any fear of physical molestation,

reprisal or other injury to or on the part of plaintiff's employees, agents, representatives, visitors, invitees, customers, suppliers or others doing or attempting to do business with plaintiff or their respective employees.

2. That the defendants, and each of them, and their agents, employees, representatives, officers, members, organizers and all persons in active concert and participation with them, be enjoined and restrained during the pendency of this action from doing or attempting to do or causing to be done, directly or indirectly by any means, method or device whatsoever, any of the things or acts set forth in paragraph 1 hereof during the pendency of this action.

IT IS FURTHER ORDERED that pending the hearing on the Order to Show Cause:

1. That the defendants, and each of them, and their members, agents, employees, representatives, officers, organizers and attorneys, and all persons in active concert or participation with them, shall be and they hereby are enjoined and restrained:

From picketing, standing, sitting, loitering, gathering, lying down, assembling, marching or maintaining any pickets or other persons at, near or about or within 200 yards in any direction from plaintiff's places of business, buildings, plants, facilities or properties, or of any easement under plaintiff's control; provided, however, that this shall not be construed to limit in any way the right of any person to enter or leave any of plaintiff's places of business, buildings, plants, facilities or properties in the course of business with plaintiff.

2. That the defendants and each of them, and their agents, employees, representatives, officers, members, organizers and attorneys and all persons in active concert and participation with

them, be enjoined and restrained pending the hearing on the Order to Show Cause from doing or attempting to do or causing to be done, directly or indirectly, by any means, method or device whatsoever any of the things or acts set forth in paragraph 1 next preceding.

Dated this 21 day of [illegible] 19[illegible].

JUDGE OF THE SUPERIOR COURT

LAW OFFICES
FORWARD, HAMILTON & SCRIPPS
SAN DIEGO, CALIFORNIA

LUCE, FORWARD, HAMILTON & SCRIPPS
[illegible] SAN DIEGO TRUST & SAVINGS BUILDING
SAN DIEGO 1, CALIFORNIA
Phone [illegible]

Attorneys for Plaintiff Fred - WINSTON [illegible] AND AS A [illegible] OF SAID UNIN[illegible] ASSN [illegible]

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

SAN DIEGO GAS & ELECTRIC COMPANY, a California corporation,

Plaintiff

vs.

SAN DIEGO CONGRESS OF RACIAL EQUALITY, an unincorporated association affiliated with the CONGRESS OF RACIAL EQUALITY; CONGRESS OF RACIAL EQUALITY an unincorporated association; HAROLD K. BROWN, individually and as a member of said unincorporated associations and as Chairman of SAN DIEGO CONGRESS OF RACIAL EQUALITY, an unincorporated association; et al.

Defendants.

NO. [illegible]32

TEM[illegible] RE-

STRA[illegible] OR-

AND O[illegible]

SHO[illegible]

Upon reading the verified Complaint on file herein and the affidavits in support thereof filed concurrently therewith, and it appearing therefrom to the Court that this is a proper instance for the issuance of a temporary restraining order and order to show cause, and that great and irreparable injury would result to plaintiff herein before the matter could be heard on notice, and good cause appearing therefor,

IT IS HEREBY ORDERED that defendants herein, and each of them, be and appear before the above entitled Court, in Department 1 thereof, on the 2nd day of June, 1961, at 10:00 A.M. of said day, then and there to show cause

if any they or any of them

1. That the defendants and each of them and their members, agents, employees, representatives, officers, organizers, attorneys and all persons in active concert or participation with them, be permanently enjoined and restrained:

(a) From picketing, standing, sitting, loitering, gathering, lying down, assembling, marching, parading, walking, stopping or stationing, placing or [illegible] any pickets or other persons at, near or about or within 500 yards in any direction from plaintiff's places of business, buildings, plants, facilities and properties, or in the street or highway, public or private, the use of which is necessary for ingress to or egress from said places of business, buildings, plants, facilities and properties or on any easements granted to plaintiff or elsewhere at or near or in the vicinity of plaintiff's places of business, buildings, plants, facilities and properties; provided, however, that this shall not be construed to limit in any way the right of any person to enter or leave any of plaintiff's places of business, buildings and [illegible] in the course of business with plaintiff.

(b) From obstructing, intimidating, threatening, molesting, annoying, assaulting, maintaining menacing attitudes, or in any manner coercing any of plaintiff's employees, agents, representatives, visitors or invitees or the employees of customers, suppliers and others doing or attempting to do business with plaintiff.

(c) From causing or inducing or attempting to cause or induce by word or act any fear of physical molest[illegible]

reprisal or other injury to or on the part of plaintiff's employees, agents, representatives, visitors, invitees, customers, suppliers or others doing or attempting to do business with plaintiff or their respective employees.

2. That the defendants, and each of them, and their agents, employees, representatives, officers, members, organizers and all persons in active concert and participation with them, be enjoined and restrained during the pendency of this action from doing or attempting to do or causing to be done, directly or indirectly by any means, method or device whatsoever, any of the things or acts set forth in paragraph 1 hereof during the pendency of this action.

IT IS FURTHER ORDERED that pending the hearing on the Order to Show Cause:

1. That the defendants, and each of them, and their members, agents, employees, representatives, officers, organizers and attorneys, and all persons in active concert or participation with them, shall be and they hereby are enjoined and restrained:

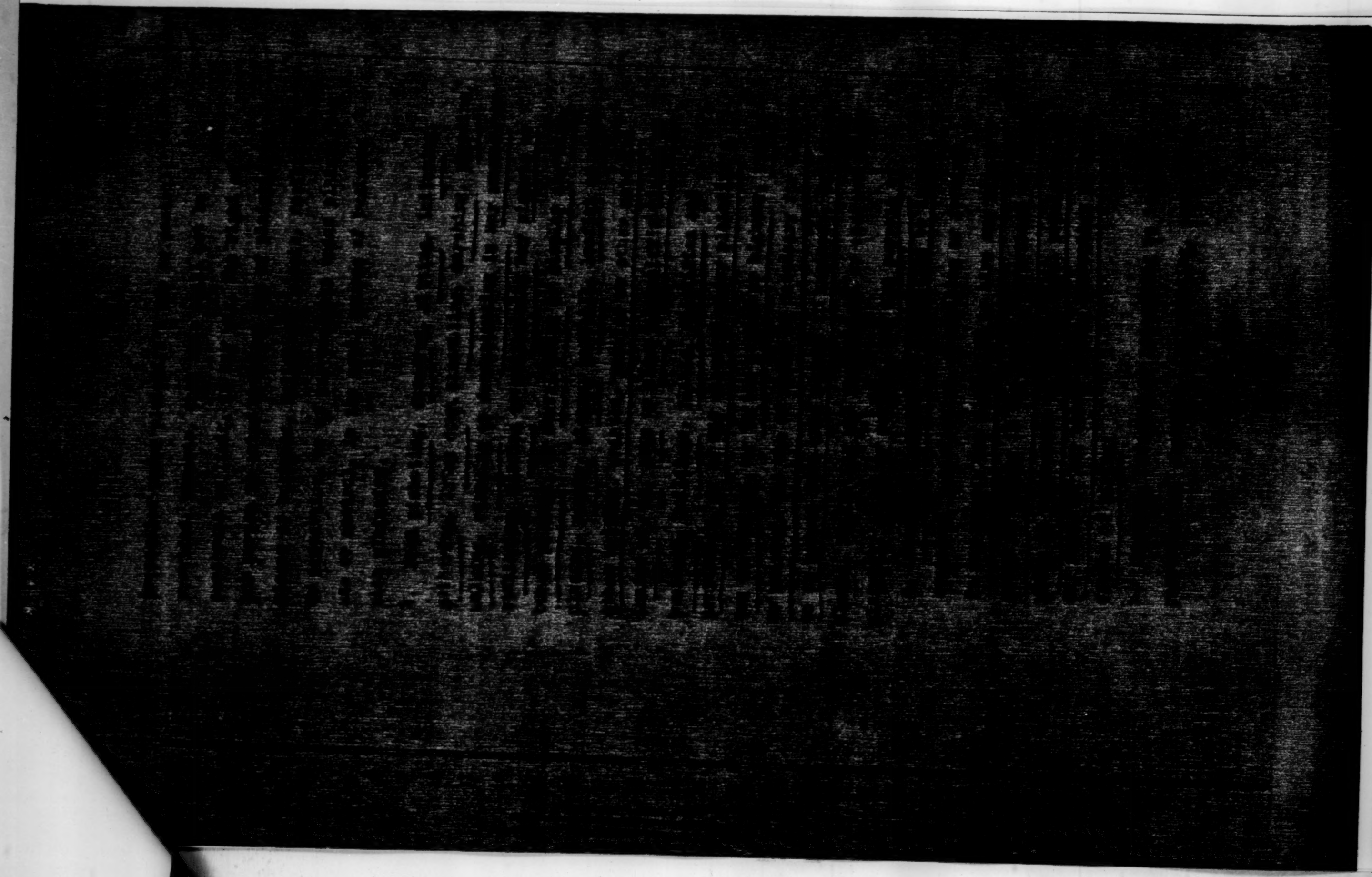
From picketing, standing, sitting, loitering, gathering, lying down, assembling, marching or maintaining any pickets or other persons at, near or about or within 200 yards in any direction from plaintiff's places of business, buildings, plants, facilities or properties, or of any easement under plaintiff's control; provided, however, that this shall not be construed to limit in any way the right of any person to enter or leave any of plaintiff's places of business buildings, plants, facilities or properties in the course of business with plaintiff.

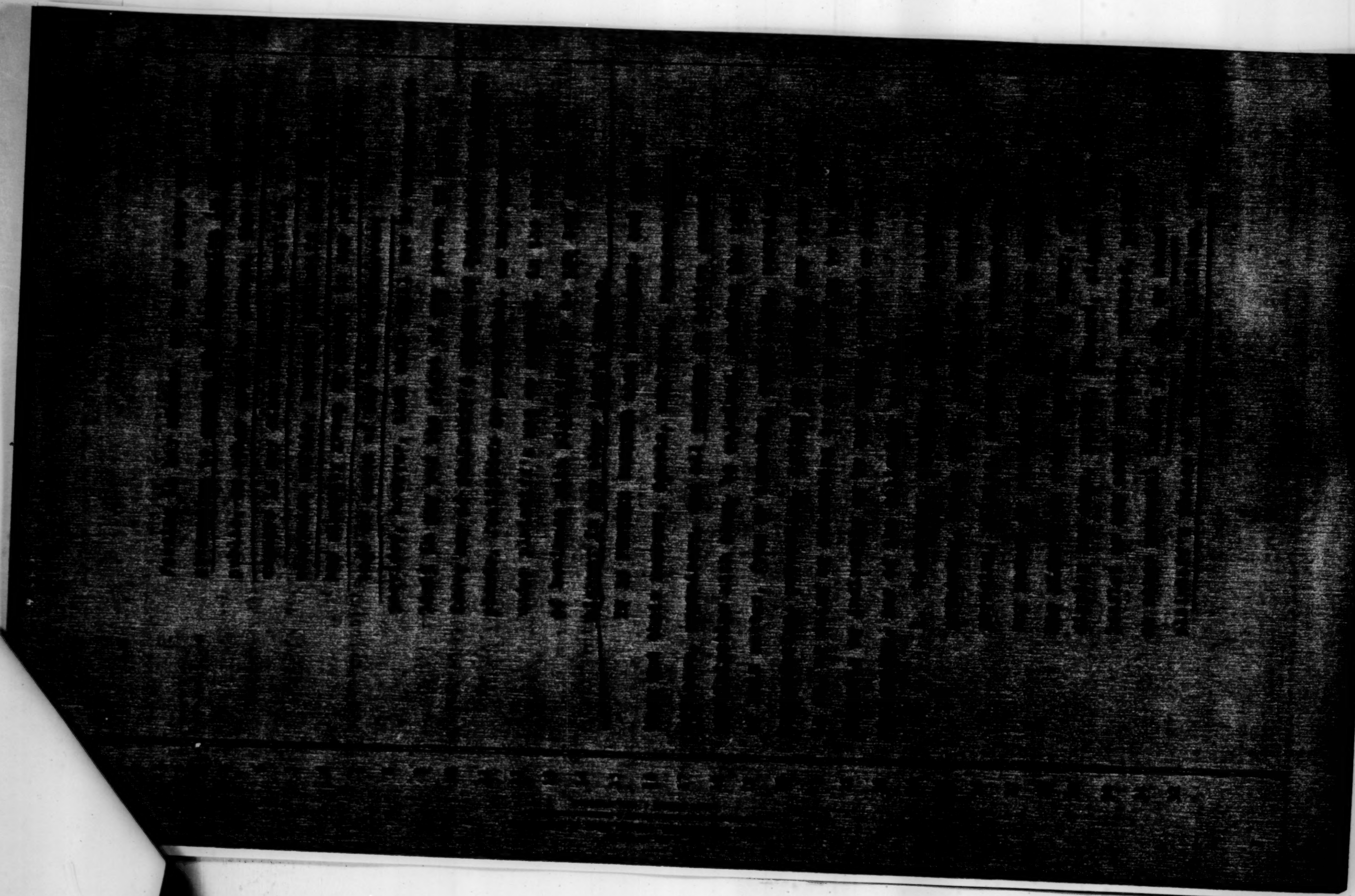
2. That the defendants and each of them, and their agents, employees, representatives, officers, members, organizers and attorneys and all persons in active concert and participation with

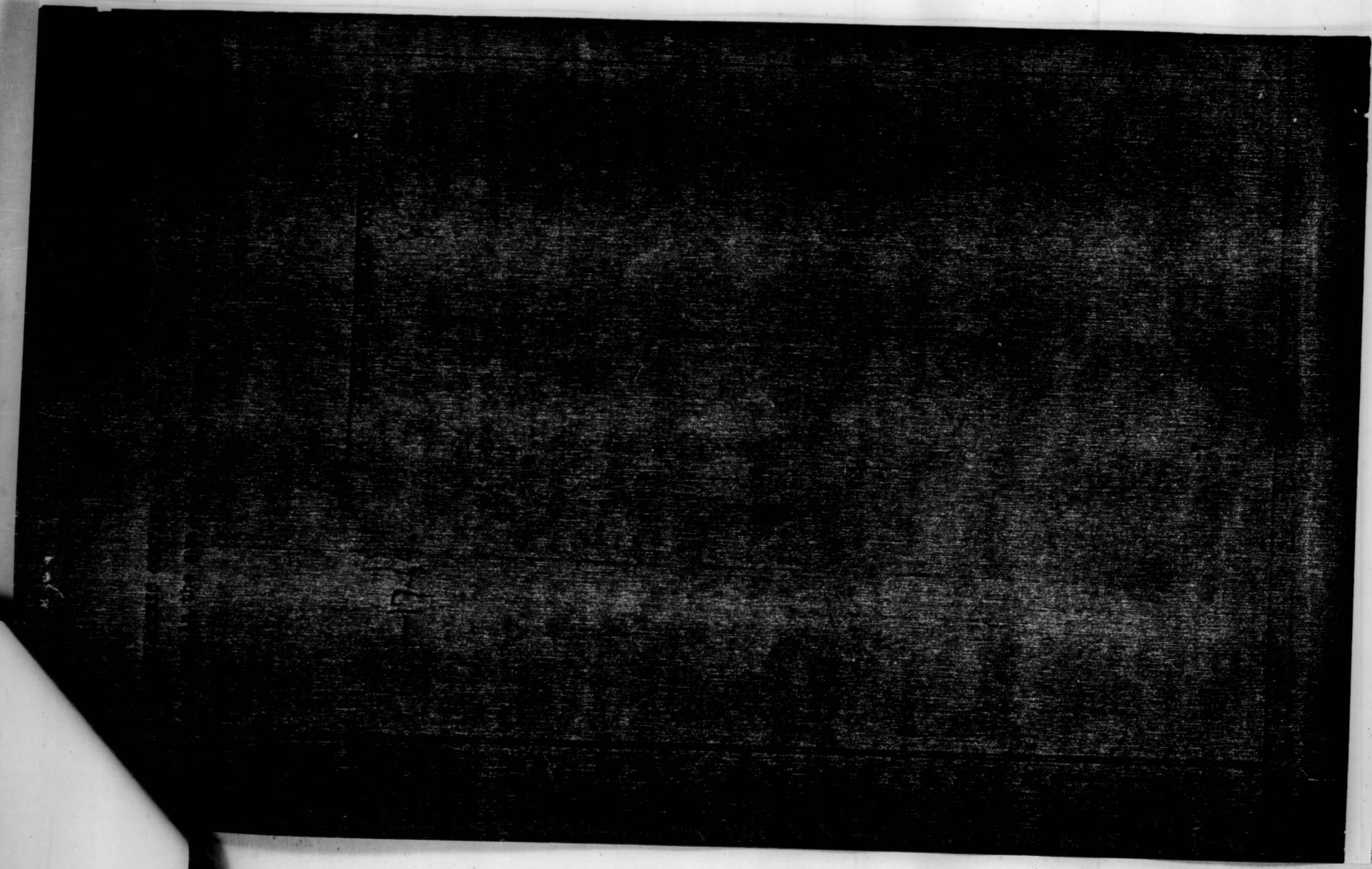
them, be enjoined and restrained forever
to every cause from doing or attempting to do or causing
directly or indirectly, by any means, method or device
any of the things or acts set forth in paragraph 1 next

Dated this 23 day of Dec 1963

Judge of the Superior Court







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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

SAN DIEGO GAS & ELECTRIC COMPANY, a California corporation,

Plaintiff

-vs-

SAN DIEGO CONGRESS OF RACIAL EQUALITY, an unincorporated association affiliated with the CONGRESS OF RACIAL EQUALITY; CONGRESS OF RACIAL EQUALITY an unincorporated association; HAROLD K. BROWN, individually and as a member of said unincorporated associations and as Chairman of SAN DIEGO CONGRESS OF RACIAL EQUALITY, an unincorporated association; et al.

Defendants.

NO.

PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES

On or about November 4, 1963, defendants demanded that plaintiff employ members of the Negro race, in all positions above the level of janitor, in a number equal to seven per cent (7%) of plaintiff's total number of employees. This figure would represent the proportional representation of Negroes in the San Diego community.

Plaintiff has refused to comply with this demand in that it would be forced to discriminate in their employment practices contrary to the announced public policy of the State of California and the Fair Employment Practices Act, Labor Code, Section 1410-1432.

Defendants have commenced picketing and other concerted activity to compel plaintiff to meet their demands.

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

SAN DIEGO GAS & ELECTRIC COMPANY, a California corporation,

Plaintiff

-vs-

SAN DIEGO CONGRESS OF RACIAL EQUALITY, an unincorporated association affiliated with the CONGRESS OF RACIAL EQUALITY; CONGRESS OF RACIAL EQUALITY an unincorporated association; HAROLD K. BROWN, individually and as a member of said unincorporated associations and as Chairman of SAN DIEGO CONGRESS OF RACIAL EQUALITY, an unincorporated association; et al.

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I

DEFENDANTS ARE ENGAGING IN PICKETING AND OTHER CONCERTED ACTIVITIES FOR AN ILLEGAL PURPOSE. DEFENDANTS, BY COERCING PLAINTIFFS TO HIRE A PROPORTIONAL NUMBER OF NEGROES, WILL THEREBY FORCE THE PLAINTIFF TO VIOLATE THE STATUTES AND JUDICIALLY EXPRESSED PUBLIC POLICY OF THE STATE OF CALIFORNIA.

Such coercion is in direct contradiction to the clearly expressed public policy of the State of California as affirmed by the United States Supreme Court.

In a case with nearly identical facts, the Supreme Court of the State of California and the United States Supreme Court have clearly held that such coercive action is an illegal objective of concerted activity and that such activity can be enjoined by State Courts. In Hughes v. The Superior Court, 32 Cal.2d, 850, (1948), certain individual defendants and unincorporated associations were enjoined " . . . from picketing or taking position in front of any of the places of business of Lucky Stores, Incorporated, for the purpose of compeling . . . (Lucky) to do any of the following acts: (1) the selective hiring of negro clerks, such hiring to be based on the proportion of white negro customers who patronize . . . (Lucky's) stores." (36 Cal.2d at page 851).

After the preliminary injunction had issued, the petitioners picketed a local store serving about 50% negro and 50% white customers. Acting in all respects in a peaceful and orderly manner, they carried placards reading, "Lucky won't hire Negro clerks in proportion to Negro trade - don't patronize." They demanded that, as positions became vacant through transfer or resignation, negroes be hired until approximate proportion to patronage was achieved. Apparently the Clerk's Union was willing to cooperate by furnishing negro clerks if source requested.

The defendants were found guilty of contempt of court for

wilfully violating the injunction and urged on appeal that the injunction and the contempt proceedings violated the defendants constitutional rights of free speech and therefore was in excess of the Court's jurisdiction and void. In affirming the lower Court's action, the Court stated:

> "We have concluded that . . . the injunction properly restrained picketing for the purpose described, and that the judgment of contempt should be confirmed.
>
> "The controlling issue is whether the sole objective involved--the discriminatory hiring of a fixed proportion of negro employees, regardless of all other considerations--is lawful."
>
> (32 Cal. 2d at pages 851, 852)

The California Supreme Court recognized the right to picket peacefully and truthfully, stating, at pages 854, 855:

> "It is now established as the law that 'the right to picket peacefully and truthfully is one of organized labor's lawful means of advertising its grievances to the public, and as such is guaranteed by the Constitution as an incident of freedom of speech.' (McKay v. Retail Auto. S.L. Union No. 1067 (1940), 16 Cal. 2d 311, 319 (106 P. 2d 373), and cases there cited; see also Magill Bros. v. Bldg. Service etc. Union (1942), 20 Cal. 2d 506, 511-512 (127 P. 2d 542); People v. Dail (1943), 22 Cal. 2d 642, 651 (140 P. 2d 828); In re Blaney (1947), 30 Cal 2d 643, 647 (184 P. 2d 892).) Nevertheless, as emphasized in James v. Marinship Corp. (1944), supra, 25 Cal. 2d 721, 728-729 (see also authorities there cited), the state may protect against abuses of the right; 'the object of concerted labor activity must be proper and . . . must be sought by lawful means, otherwise the persons injured by such activity may obtain damages or injunctive relief.' (See also Hawk & Gilford I. Corp. v. International etc. of Teamsters (1946), supra, 27 Cal. 2d 599, 603; Northwestern Pac. R. R. Co. v. Lumber & S. W. Union (1948), 31 Cal. 2d 441, 446 (189 P. 2d 277).)"

> "In the Marinship case the court was concerned with the fundamental question . . . 'whether a closed union coupled with a closed shop is a legitimate objective of organized labor.' . . . We held that a union which holds a closed shop contract or other form of labor monopoly must admit Negroes to membership under the same terms and conditions applicable to non-Negroes unless the union and the employer refrain from enforcing the closed shop agreement against them. There was not in that case any contention that the number of Negroes admitted to membership in the union or hired by the employer must be proportional, regardless of all other considerations, to the number of Negroes residing in the area or doing business with the employer. The judgment awarding

> a preliminary injunction which "was clearly intended to do no more than eliminate discrimination upon the basis of race and color alone," was affirmed. . . .
>
> "It is apparent that the same principles which impelled affirmance of the judgment in Marinship require that the injunction and the contempt order in the case now before us be upheld. . . ."

The California Supreme Court in the Hughes case applied the principles of the Marinship case that a union could not have a closed shop with discrimination based on race and color. The majority in the Hughes case took the view that compliance by Lucky Stores with the demand would have made membership in the Negro race a necessary qualification for a definite proportion of the jobs - a closed Negro shop as to those jobs. Since race and color are inherent and unchangeable qualities, all non-Negroes would be excluded, arbitrarily, from the only category of applicants who could meet the necessary qualifications (being a member of the Negro race). Thus, the majority considered the Negro race as a closed union which others could not join. They concluded that the Negro petitioners, representing the closed union (the Negro race), were picketing to enforce a closed shop as to a portion of the jobs - an unlawful objective of union activity under the principles of the Marinship case which held that a "closed" union, arbitrarily excluding Negroes, could not enforce a closed shop contract.

> "If Lucky had yielded to the demands of petitioners, its resultant hiring policy would have constituted, as to a proportion of its employees, the equivalent of both a closed shop and a closed union in favor of the negro race. It would have had no choice but to employ only members of the negro race in a fixed number of clerical positions, thus effectuating a closed negro shop as to those positions. Moreover, because race and color are inherent qualities which no degree of striving or of other qualifications for a particular job could meet, those persons who are born with such qualities constitute, among themselves, a closed union which others cannot join. It was just such a situation--an arbitrary discrimination upon the basis of race and color alone, rather than a choice based solely upon individual qualifications for the work to be done--which we condemned in the Marinship case . . . . The fact

that those seeking such discrimination do not demand that it be practiced as to all employees of a particular employer diminishes in no respect the unlawfulness of their purpose; they would, to the extent of the fixed proportion, make the right to work for Lucky dependant not on fitness for the work nor on an equal right of all, regardless of race, to compete in an open market, but, rather, on membership in a particular race. If petitioners were upheld in their demand then other races, white, yellow, brown and red, would have equal rights to demand discriminatory hiring on a racial basis. Yet that is precisely the type of discrimination to which petitioners avowedly object."

(32 Cal. 2d at p. 856)

In addition, the Hughes court recognized "for the purpose of this decision" that if such discrimination is practiced by an employer, picketing to protest it would not be an unlawful objective. 32 Cal.2d at 855, 857. But, the court pointed out, no such broad purpose was shown to have motivated the activities of the Negroes in their picketing Lucky. Thus, as pointed out by one writer, the California Supreme Court would permit picketing to protest against discrimination, though it will not permit the application of any arbitrary test, such as the principle of patronage, at least as for a basis for hiring. 37 Cal. Law Review, 296, 300 (1949). It may be concluded, therefore, that the central evil viewed by the Supreme Court and Hughes was the arbitrary demand by the Negroes for the application of an objective numerical test for Negro employment, thereby effecting an intention or practice by Lucky that it did not discriminate in its hiring.

In affirming the California Supreme Court, the United States Supreme Court was more broad. The Court, in effect, made illegal picketing for the purpose of coercing an employer to hire minority groups in proportion to the representation in the community. The Court, after adopting the language of the California Court, 32 Cal. 2d at 856, quoted above, stated, Hughes v. Superior Court of California, 339 U. S. 460, 464; 94 Lawyers' Edition 985, 991-992 (1950):

"These considerations are most pertinent in regard to a population made up of so many diverse groups as ours. To deny California the right to ban picketing in the circumstances of this case would mean that there would be no prohibition of the pressure of picketing to secure proportional employment on ancestral grounds of Hungarians in Cleveland, of Poles in Buffalo, of Germans in Milwaukee, of Portuguese in New Bedford, of Mexicans in San Antonio, of the numerous minority groups in New York, and so on through the whole gamut of racial and religious concentrations in various cities. States may well believe that such constitutional sheltering would inevitably encourage use of picketing to compel employment on the basis of racial discrimination. In disallowing such picketing States may act under the belief that otherwise community tensions and conflicts would be exacerbated. The differences in cultural traditions instead of adding flavor and variety to our common citizenry might well be hardened into hostilities by leave of law. The constitution does not demand that the element of communication in picketing prevail over the mischief furthered by its use in these situations."

At 339 U. S. 466, the Court indicated that the due process clause did not prevent the state court from regulating the strike which was for an illegal purpose stating:

"The constitutional boundary line between competing interests of society involved in the use of picketing cannot be established by general phrases. Picketing when not in numbers that of themselves carry a threat of violence may be a lawful means to a lawful end. . . . The California Supreme Court suggested a distinction between picketing to promote discrimination, as here, and picketing against discrimination; it may be assumed for the purposes of this decision, without deciding, that if such discrimination exists, picketing to protest it would not be for an unlawful objective. 32 Cal. 2d at 855. . . . We cannot construe the due process clause as precluding California from securing respect for its policy against involuntary employment on racial lines by prohibiting systematic picketing that would subvert such policy. . . ."

It should be noted that at this time California had not enacted the Fair Employment Practices Act. The Court stated, at 339 U. S.

"The fact that California's policy is expressed by the judicial organ of the State rather than by the legislature we have repeatedly ruled to be immaterial. . . ."

Since the Hughes case the California Legislature has enacted the

California Fair Employment Practices Act. This Act expressly makes illegal discrimination in the hiring practices of any employer. Thus, this picketing violates not only the announced public policy of the State of California, and the Supreme Court of the United States, but is in violation of the express legislative enactment.

Labor Code, Section 1411 provides in part:

> "It is hereby declared as the public policy of this state that it is necessary to protect and safeguard the right and opportunity of all persons to seek, obtain, and hold employment without discrimination or abridgement on account of race, religious creed, color, national origin, or ancestry. . . ."

Labor Code, Section 1420 provides that it shall be an unlawful employment practice:

> "(a) For an employer, because of the race, religious creed, color, national origin, or ancestry of any person, to refuse to hire or employ him or to bar or to discharge from employment such person, or to discriminate against such person in compensation or in terms, conditions, or privileges of employment. . . ."

By this Act, public utilities are under a duty to hire without regard to race, religious creed, color, national origin, or ancestry of any person. They may not discriminate in compensation or in terms, conditions, or privileges of employment. Plaintiff has expressly in the past and presently hired employees without regard to their race, religious creed, color, national origin, or ancestry. If plaintiff is coerced into hiring a certain percentage of Negro labor, it will be forced to violate this Act.

The objective which is illegal here is not the concerted action to prevent discrimination as such, but rather the concerted action to force the employer to discriminate in his employment practices, i.e., the hiring of Negroes to reflect their proportionate representation in the community. Neither the courts nor the constitution compel enforcement of either type of discrimination. In Wright v. Rosenfeller, 211 Fed. Supp. 360-363 (1962), the Court stated:

> "The argument assumes that under the Constitution there can be 'good' segregation along racial lines as against 'bad' segregation."

The Court notes the Hughes case stating that the case held picketing to compel the hiring of employees in proportion to the racial origin of employers' customers could be enjoined.

In Progress Development Corporation v. Mitchell, 182 Fed. Supp. 686 (1960), the Court was presented with a unique situation. The plaintiff, a developer of subdivision homes, had announced plans to sell his houses to different races in proportion to their representation in the community, which was in Northern Illinois. As a result of the plaintiff's announced intentions, the city officials commenced proceedings to condemn the subdivision property. In his complaint the plaintiff alleged that his Constitutional civil rights were impaired. In dismissing the complaint the Federal Court stated at pages 706, 707:

> "(Plaintiff) . . . devised a plan of controlled integration for the Village of Deerfield which required that each purchaser, as a condition precedent to his purchase, execute a separate re-sale agreement which is not to be recorded. This agreement with Progress gives the latter the exclusive right to select a purchaser for the property in the event of a re-sale of said premises. Progress would re-sell to another person of the same race as the original purchaser and initial integration would be continued.
>
> "Progress's plan is clearly a device to restrict the conveyance of real property to persons of a certain race. In an evident effort to circumvent the law as laid down in Shelley v. Kraemer, 334 U.S. 1, 68 S. Ct. 836, 92 L.Ed. 1161, . . . Progress attempts to accomplish its purpose by requiring the execution of separate, unrecorded re-sale Agreement(s) incorporating appropriate restrictive language, all of which is fortified and implemented by certain minutes and corporate resolutions separately entered or adopted by Progress and Modern. A controlled integration plan with discriminatory restrictions, albeit they are not recorded and are only in the form of covenants contained in a deed, cannot be enforced in any court in the United States. It would amount to a quota system of housing and that is just as illegal as the quota system of employment that a group of negroes sought to enforce on a

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Hughes v. Superior Court . . . . . In tha
the Supreme Court, in a unanimous decis
lawed a compulsory employment system.
Frankfurter delivered the opinion of th
and, quoting from the language of the Su
Court of California. ...said . . . . :
tioners were upheld in their demand the
races, white, yellow, brown and red, wo
equal rights to demand discriminatory h
a racial basis. Yet that is precisely
of discrimination to which petitioners
object.'

"If a population quota of 80 to 20, fou
unrecorded restrictive agreements is co
then a quota of 50 to 50 or 99 to 1 or
0 would be constitutional and Shelley v
supra, would be circumvented.

"True, plaintiffs' plan may appear attr
Negroes at the particular moment in a p
place, but it would constitute a strait
It is but a mess of pottage offered in
for a birthright of equality."

II

THE ILLEGAL PURPOSE DOCTRINE HAS BEEN R
AND APPLIED BY THE COURTS OF CALIFORNIA
SUPREME COURT OF THE UNITED STATES.

The California courts have clearly recognized
enjoin picketing done for an unlawful purpose.

In Magill v. Bldg. Service Employees' Union, 2
127 P. 2d 502 (1942), it was held expressly that t
be honest and truthful and that "the policy of thi
characterizes the use of false or fraudulent state
as unlawful is within the permissible limitation w
impose upon industrial combatants without impairin
free speech."

In James v. Marinship Corp., 25 Cal. 2d 721, 7
Supreme Court of California stated:

> "It should be recognized at the outset
> union may use the false forms of concer
> such as strike, picketing, or boycott,
> an objective that is reasonably related
> timate interest of organized labor. . .
> equally well settled that the object of

> labor activity must be proper and that it must be sought by lawful means, otherwise the persons injured by such activity may obtain damages or injunctive relief."

In Park & Tilford Import Corporation v. International Brotherhood of Teamsters, 27 Cal. 2d 599; 165 P. 2d 891, 162 ALR 1426 (1946), the plaintiff sought an injunction on the ground that the objective of defendant unions' picketing--to force it to sign a closed shop contract--was illegal under the Wagner Act. Plaintiff refused to sign the contract on the grounds that this would be an unfair labor practice under the National Labor Relations Act, since the Act prohibited such a contract where the union did not represent a majority of the employees. Judgment for plaintiff was modified and affirmed by the California Supreme Court which stated, at page 614:

> "Since defendants, in connection with their concerted activities, made unlawful demands that plaintiff sign a closed shop contract and coerced its employees to join defendant unions, it was permissible with the trial court to enjoin defendants from making such demands."

See also Lilliefloren v. Superior Court, 31 Cal. 2d 439; 189 P. 2d 265 (1948)

In Northwestern Pac. R. R. v. Lumber & Sawmill Workers' Union, 31 Cal. 2d 441; 189 P. 2d 277 (1948), the Supreme Court of California affirmed the injunction against defendant union for interference by means of picketing or other concerted activities with the performance of plaintiff's statutory obligations on the ground that the object of such concerted activities is unlawful. Defendant union interfered and impeded plaintiff's duty as a common carrier.

> "It is true that the publicizing of a labor dispute by picketing has been identified with the constitutional guarantees of freedom of speech, press and assemblies. (citations). Such identification, however, does not free picketing from all restraint. (citations) And it appears to be settled that injunctive relief against picketing is available where

> the object sought to be achieved where the means used to achieve it are unlawful. (citations) We must, therefore, give consideration to the problems, first, the validity of the object sought to be achieved, and, second, the lawfulness of the means employed to achieve such object. In one sense, it might be said that the object or purpose was to obtain proper labor objectives namely, the granting of the demands made upon the lumber companies for improved working conditions. Then the object would be valid but the means--seeking to compel the plaintiff to refrain from performing its law imposed duties as a common carrier, would be unlawful. If it is said that the object was to cause plaintiff to refuse to abide by its obligations to the lumber companies as a common carrier, then the object would be unlawful."
>
> (31 Cal. 2d at pages 445, 446)

In Safeway Stores v. Retail Clerks, 41 Cal. 2d 567, 573 (1963), the defendant unions were picketing Safeway Stores in order to coerce Safeway to require their store managers to be included in the labor contract with the defendant union. The Court stated, at page 563:

> "The question, then is as to the right of the clerks' unions under state law to engage in concerted activities against Safeway for the purpose of requiring store managers to be included in the labor contract of the clerks.
>
> "The Federal Amendatory Act neither enlarges nor limits the existing fundamental rights of supervisors. What it does is to unclassify supervisors as employees under federal and state acts regulating the exercise of employees' collective bargaining rights, coupled with the inhibition against compulsions on the employer engaged in interstate commerce to include supervisors as employees for the purpose of such acts . . . .
>
> "It is undisputed that concerted union activity for an objective which is not reasonably related to any ligitimate interest of organized labor will be enjoined."

And at pages 575, 576, the court stated:

> "Confronted with the responsibility of declaration where as here there is no constitutional or legislative guide on the subject we hold that the trial court was correct in deciding that the coercion sought to be exercised by the defendants under the circumstances of this case was not reasonably related to any legitimate interest of organized labor; that the activities of the defendants were not in the furtherance of any

> proper labor objective, and that as a matter of sound public policy were enjoinable within the equity jurisdiction of the court."

In Chavez v. Sargent, 52 Cal. 2d 162 (1959), the Court, while denying an injunction to the employer, recognized the illegal purpose doctrine as being in effect in California, stating at page 198:

> "A strike with a jurisdictional objective is unlawful in certain applications hereinabove suggested and hereinafter discussed, not because a strike as such is unlawful or unprotected but because it, like any other concerted action, must have a lawful objective."

See also, Abstract Investment Company v. Hutchinson, 204 Cal. App. 2d 242, 250 (1962)

The United States Supreme Court has established that picketing may be enjoined when done for an unlawful purpose. In Building Serv. E.I.U. v. Gazzam, 339 U. S. 532, 70 Sup. Ct. 784, 94 L.Ed. 1045 (1949), the Supreme Court affirmed a judgment against defendant union for injunction and damages suffered as a result of picketing for the purpose of compelling plaintiff to coerce his employee's choice of bargaining representative. The public policy of the State of Washington prohibited employers from coercing their employee's choice of representative for purposes of collective bargaining. The Court stated at page 541:

> "The public policy of Washington relied upon by the courts below to sustain this injunction is an important and widely accepted one. The broad purpose of the Act from which this policy flows was to prevent unreasonable judicial interference with legitimate objectives of workers. But abuse by workers ... of the declared public policy of such an Act is no more to be condoned than violation of prohibitions against judicial interference with certain activities of workers. We therefore find no unwarranted restraint of picketing here. The injunction was tailored to prevent a specific violation of an important state law. The decree was limited to the wrong being perpetrated, namely, an abusive exercise of the right to picket." Cafeteria Employees Union v. Angelos, 320 U.S. at 295, 88 L.Ed. 60, 64."

See also: Local Union No. 10, A.F. of L. v. Graham, 345 U.S. 192, 97 L. Ed. 946, 73 Sup. Ct. 585 (1953)

International Brotherhood v. Vogt, 354 U.S. 284,

L. Ed., 2d 1347, 77 Sup. Ct. 1165 (1957).

III

PLAINTIFFS ARE UNDER A DUTY IMPOSED BY STATUTE, SECTION 1420 OF THE LABOR CODE, TO HIRE WITHOUT REGARD TO RACE, RELIGION, CREED, COLOR, NATIONAL ORIGIN, OR ANCESTRY. PLAINTIFF HAS CONSISTENTLY IN THE PAST ENGAGED AND CONTINUES TODAY TO ENGAGE IN HIRING PRACTICES WITHOUT DISCRIMINATION. DEFENDANTS BY THEIR PICKETING AND OTHER CONCERTED ACTIVITIES ARE ATTEMPTING TO COERCE THE PLAINTIFF TO VIOLATE THIS STATUTORY DUTY BY FORCING THE PLAINTIFF TO HIRE A DEFINITE PROPORTIONAL NUMBER OF NEGRO EMPLOYEES, THEREBY DISCRIMINATING AGAINST OTHER RACIAL, ETHNIC, AND NATIONAL GROUPS. BY PICKETING TO FORCE A VIOLATION OF A STATUTORY DUTY DEFENDANT IS USING SUCH CONCERTED ACTIVITY FOR AN UNLAWFUL PURPOSE.

Labor Code, Section 1420 provides: that it shall be an unlawful employment practice, . . .

> "(a) For an employer, because of the race, religious creed, color, national origin, or ancestry of any person, to refuse to hire or employ him or to bar or to discharge from employment such person, or to discriminate against such person in compensation or in terms, conditions or privileges of employment."

Labor Code, Section 1411 provides in part:

> "It is hereby declared as the public policy of this state that it is necessary to protect and safeguard the right and opportunity of all persons to seek, obtain, and hold employment without discrimination or abridgement on account of race, religious creed, color, national origin, or ancestry. . . ."

Although there have been no decisions construing Section 1420 of the Labor Code, which was enacted in 1959, Stats 1959, Ch. 121, Section 1, California courts have clearly held that picketing may be enjoined when it is for the purpose to force the plaintiff to

violate a statutory duty.

In Retail Clerk's Union v. Superior Court, 35 Cal. 2d 232 (1950), the defendant unions were picketing the plaintiff employer to compel the employer to force his employees to recognize the unions. Neither the employer nor his workers desired to negotiate with the unions. The Court held that this action was not a legal exercising of union activity and violated the Labor Code of the State of California and therefore enforced the injunction.

In Gibbney v. Empire Storage and Ice Co., 336 U.S. 490 (1948), an ice-peddlers' union sought to break down the resistance of non-member peddlers to efforts to get them to join the union with the ultimate objective of obtaining better wages and working conditions, by inducing wholesale distributors to agree not to sell ice to non-union peddlers. Such an agreement was illegal under a state statute (Missouri) declaring combinations in restraint of trade to be unlawful. A distributor having refused so to agree, the union resorted to peaceful picketing, the effect of which, in consequence of refusal of union members to cross the picket line, was to reduce its business by 85%. In a suit to enjoin the picketing, the union asserted that they were merely exercising their constitutional rights to publicize the existence of a labor dispute and the fact that the distributor was selling ice to non-members of a union. The Supreme Court unanimously held that the state statute was constitutionally applicable to labor unions, and that the right of free speech does not extend in furtherance of an illegal end--in this case an agreement to sell to union members only. Affirming the injunction against picketing of plaintiff's plant, the Court declared, 336 U.S. 504:

> ". . .it is clear that appellants were doing more than exercising a right of free speech or press. Bakery & P. Drivers & Helpers, I.B.T. v. Wohl, 315 US 769, 776, 777, 86 L. ed 1178, 1184, 1185, 62 S Ct. 816. They were exercising their economic power together with that of their allies

to compel Empire to abide by union rather than by state regulation of trade."

And at page 502,

"For the placards were to effectuate the purposes of an unlawful combination, and their sole, unlawful immediate objective was to induce Empire to violate the Missouri law by acquiescing in unlawful demands [illegible] to sell [illegible] to nonunion peddlers."

See also: Safeway Stores v. Retail Clerks, supra, 41 Cal. 2d 567 (1953); Bank & Milford Import Corporation v. International Brotherhood of Teamsters, supra, 27 Cal. 2d 599; 165 P. 2d 891, 162 ALR 1426 (1946); Northwestern Pac. R.R. v. Lumber & Sawmill Workers' Union, supra, 31 Cal. 2d 441; 189 P. 2d 277 (1948).

IV

THE VERIFIED COMPLAINT AND SUPPORTING AFFIDAVITS SHOW THAT GREAT AND IRREPARABLE INJURY WILL RESULT TO PLAINTIFF UNLESS A TEMPORARY RESTRAINING ORDER ISSUE, WITHOUT NOTICE, PENDING THE HEARING ON THE ORDER TO SHOW CAUSE, AND A PRELIMINARY INJUNCTION ISSUE THEREAFTER, PENDING TRIAL ON THE MERITS. Code of Civil Procedure, Sections [illegible]; Stalder v. Iowa Beach Local No. [illegible], 28 Cal. 2d 670 (1946).

V

WHEN SECONDARY PICKETING OF HOMES OF OWNERS OR PERSONS PICKETING A PLACE OF BUSINESS IS SUCH AS TO CONSTITUTE INTIMIDATION OF AND WOULD REASONABLY INDUCE FEAR OF PHYSICAL MOLESTATION IN EMPLOYEES, CUSTOMERS AND OTHERS DESIRING THEREIN TO GO AND REFRAIN FROM A PLACE OF BUSINESS, SUCH PICKETING AND MASSING IS UNLAWFUL AND MAY BE ENJOINED.

Steiner v. Long Beach Local No. 128,

19 Cal. 2d 676 (1942)

Lisse v. Local Union No. 31,

2 Cal. 2d 312 (1935)

". . . in order to prove physical intimidation and fear it is not necessary to show that there was actual force or express threats of physical violence used, that such result may be accomplished as effectually by obstructing and annoying others and by insult and menacing attitude as by physical assault. (Southern Cal. Co. v. Amalgamated Assn., supra; Jordahl v. Hayda, 1 Cal. App. 696 (82 Pac. 1079); Martin on Labor Unions, p. 229.) In so holding the Supreme Court in the case of Southern Cal. Co. v. Amalgamated Assn., supra, in quoting approvingly from another (Allis-Chalmers Co. v. Iron Molders Union, 150 Fed. 155, 173), said that 'intimidation includes persuasion by or on behalf of a combination of persons, resulting in coercion of the will from the mere force of numbers'; and the court then points out that the same rule is declared in Martin on Labor Unions, supra, as follows: 'Even a simple "request" to do or not to do a thing, made by one or more of a body of strikers under circumstances calculated to convey a threatening intimation, with a design to hinder or obstruct workmen, is unlawful intimidation, and not less obnoxious than the use of physical force for the same purpose.' The rule is applied with equal force as to customers and patrons. (Goldberg, Bowen & Co. v. Stablemen's Union, supra.)".

Lisse v. Local Union No. 31, 2 Cal. 2d 312, 317 (1935)

Seven Up Bottling Company v. Grocery etc. Union,

40 Cal. 2d 368 (1953)

"Peaceful picketing has been identified with freedom of speech--a means by which the pickets communicate to others the existence of a . . . controversy. . .

"It has been pointed out that such identification does not free the concerted activity of picketing from all restraint. 'And it appears to be settled that injunctive relief against picketing is available where the object sought to be achieved or the means used to achieve it are unlawful. . . . .'"

Seven Up Bottling Company v. Grocery etc. Union,

40 Cal. 2d 368, 374 (1953)

In re Bell, 19 Cal. 2d 488 (1942)

"When pickets patrol the public street which is

the approach to their employer's premises and either their number or their conduct is such as to constitute intimidation and put employees or others in fear of bodily harm, they are guilty of unlawful acts."

Pascold v. Amalgamated etc. Workmen,

54 Cal. App. 2d 129 (1942)

". . . .the use of words and an aggregation of pickets which reasonably induce fear of physical molestation may properly be enjoined."

See also Magill Bros. Inc. v. Building Service, etc. Union, 20 Cal. 2d 506 (1942)

Goldwyn v. Screen Set Designers, etc. (L.A. Supr. No. 502, 731 Aug. 13, 1945), 10 Labor Cases, Para. 62, 751, 16 LRRM 691.

"The congregation of a large number of pickets is not calculated to appeal to the reasoning powers of persons who come into contact with the picket line, but is an exhibition of force."

Lewis v. International Ladies' Garment Workers Union, (L.A.Supr. No. 541, 441, April 21, 1948), 14 Labor Cases, Para. 64, 454.

"The Supreme Court of the United States has consistently held that the right to picket is a right merely to publicize grievances peaceably and that such right may be and rightly is limited to a very few pickets--usually three or less, generally only one--with restrictions as to the places where picketing may be indulged in. Mass picketing, as the Supreme Court of the United States time and again has stated, is unnecessary, improper and completely illegal."

See also U.S. Electrical Motors, Inc. v. United Electrical, etc. Workers (L.A. Supr. No. 509, 487, Feb. 6, (1946), 166 P. 2d 921; 10 Labor Cases, Para. 62, 975, 17 LRRM 824; Evans v. Cooper (L.A.Supr., December 24, 1941), 5 Labor Cases, Para. 60, 848.

The United States Supreme Court has on many occasions applied the regulation of the abuse of the right to picket.

Building Service Employees International Union v. Gazzam,

339 U.S. 532, 94 L. Ed. 1045 (1950)

"But since picketing is more than speech and establishes a locus in quo that has far more potential for inducing action or nonaction than the message the pickets convey, this Court has not hesitated to uphold a state's restraint of acts and conduct which are an abuse of the right to picket rather than a means of peaceful and truthful publicity."

Bakery & Pastry Drivers, etc. v. Wohl,

315 U. S. 769, 86 L. Ed. 1178 (1942)

"Picketing by an organized group is more than free speech, since it involves patrol of a particular locality and since the very presence of a picket line may induce action of one kind or another, quite irrespective of the nature of the ideas which are being disseminated. Hence these aspects of picketing make it the subject of restrictive regulation."

(Concurring opinion of Mr. Justice Douglas)

Hughes v. Superior Court, 339 U. S. 460, 94 L. Ed. 985, 992 (1950):

"But while picketing is a mode of communication it is inseparably something more and different. Industrial picketing is more than free speech, since it involves patrol of a particular locality and since the very presence of a picket line may induce action of one kind or another, quite irrespective of the nature of the ideas which are being disseminated. Mr. Justice Douglas, joined by Black and Murphy, JJ., concurring in Bakery & Pastry D. & W. Local [illegible], 315 U.S. 769, [illegible] 776, 86 L. Ed. 1178, [illegible] 1180, 62 S. Ct. 816. Publication in a newspaper, or by distribution of circulars, may convey the same information or make the same charges as do those patrolling a picket line. But the very purpose of a picket line is to exert influences, and it produces consequences, different from other modes of communication. The compelling and responses evoked and exacted by picket lines are unlike those flowing from appeals by printed word."

See also Wortex Mills v. Textile Workers Union, 85 A. 2d 851 (1952); General Cable Corporation v. Virgil, (N.Y. Supr. Ct., July 11, 1952), 30 LRRM 2249

III.

CONCLUSION

Picketing in this case is illegal, per se. The reason for this is that it is seeking an unlawful objective, to wit: employment within plaintiff's company upon the basis of membership and not upon the basis of qualification. [illegible] would discriminate against others.

Picketing in this case, even if it be assumed is for a lawful purpose, goes beyond publicizing the grievances of the defendants and is intended to obstruct, intimidate, coerce, and physically interfere with and molest public utility operations.

Respectfully submitted,

[illegible]

[illegible]

IN THE UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MISSOURI

EASTERN DIVISION

In the matter of the petition of Robert B. Curtis, William L. Clay, Lucien Richards, Rev. Charles Perkins and Norman Seay.	No. 64 C 52	(3)
In the matter of the petition of Louis Ford, Ian Grand, Benjamin Goins, Roberta Tournour, Taylor Jones, Kenneth Lee and Ronald Glenn.	No. 64 C 53	(2)
In the matter of the petition of Michela Grand, Daniel Pollock and James Peake, Jr.	No. 64 C 54	(3)

MEMORANDUM OPINION

The petitioners in these causes applied for writs of habeas corpus alleging that they are unlawfully restrained of their liberty in violation of the Constitution of the United States. The pleadings show that the petitioners are in the custody of the Warden of the City Jail of the City of St. Louis pursuant to orders of commitment served upon him by the Sheriff of the City of St. Louis on October 25, 1963, issued out of the Circuit Court of the City of St. Louis, State of Missouri, Division 2, presided over by Honorable Michael J. Scott, Judge. Petitioners were convicted of contempt of Court for their alleged violations of an injunction which had issued out of the Circuit Court of the City of St. Louis on August 30, 1963, restraining certain of these petitioners as individuals and as representatives of a class known as the St. Louis Committee On Racial Equality from physically interfering with other persons' entry and transaction of business at the Jefferson Bank and Trust Company.[1] Judge Scott sentenced each to definite terms ranging from sixty days to one year and imposed fines in amounts of from $500.00 to $1000.00.

The separate causes before this Court arise out of separate alleged violations of the injunction involving different

parties, occurrences and trials for criminal contempt in the Circuit Court. However, the procedure after trial and commitment is the same for each of the three groups of petitioners before this Court. The petitioners filed applications for writs of habeas corpus to the St. Louis Court of Appeals, and a writ was issued.[2] A hearing was held on the merits reviewing the facts and the law. By an opinion filed January 15, 1964, four of the petitioners in that cause were discharged, and as to the other petitioners, which included all of the petitioners before this Court, the writs were quashed. The Court reviewed the facts, not only to determine whether constitutional rights of the petitioners had been violated, but also as an appellate court determining whether the record supported a finding of guilty beyond a reasonable doubt. The remaining petitioners then filed a writ of habeas corpus in the Supreme Court of Missouri raising all of the points raised here and others. The Supreme Court of Missouri in banc filed per curiam opinions adopting the opinion of the St. Louis Court of Appeals as to all of the petitioners and denying the writs. Petitioners have not sought certiorari from the Supreme Court of the United States for review of the decision of the Supreme Court of Missouri adverse to their contentions.

On February 7, 1964, petitioners applied here for habeas relief. We issued an order upon the Warden of the City Jail to show cause on February 17, 1964, why the writ should not issue. The time was extended to February 20, 1964, and on that date a return to the order was filed and a hearing set for February 27, 1964. Petitioners' answer of February 25, 1964, to the return raised the legal issue of whether petitioners had exhaused state remedies within the meaning of the federal habeas corpus statute, 28 U.S.C.A. S.2254:

> "State custody; remedies in State Courts
> An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears

> that the applicant has exhausted the remedies available in the courts of the State, or that there is either an absence of available State corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner.
>
> An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented."

It can not be doubted that prior to Fay v. Noia, 372 U.S. 391, it was the rule that exhaustion of state remedies within the meaning of the statute included seeking certiorari in the United States Supreme Court of the decision of the State's highest court denying the writ. Darr v. Burford, 339 U.S. 200. It is clear that Fay v. Noia effectively disposes of the ruling in Darr v. Burford "to the extent it may be thought to have barred a state prisoner from federal habeas relief if he had failed timely to seek certiorari in this Court from an adverse decision. Fay v. Noia, supra, at page 435. The posture of these petitioners is different. They have not failed timely to seek certiorari but rather have open to them at this moment potential relief by way of petitioning for certiorari from the adverse decision of Missouri's highest court denying them habeas relief. Thus the factual basis underlying Fay v. Noia is not present here. While the Supreme Court discusses the question of whether"remedies available in the courts of the State" includes presently available certiorari and gives a strong indication that in the future the vitality of Darr v. Burford may altogether fail and the reasons for that possibility, such discussion is dictum and so recognized therein. Fay v. Noia, supra, 435-438.

However, there is another unique feature to the instant circumstances. Under Missouri law there is no appeal, denominated as such, from a judgment of conviction for indirect criminal contempt. The opinion of the St. Louis Court of Appeals denying these petitioners relief explains that to remedy that lack of appeal, the role of the writ of habeas corpus is expanded to

include want of jurisdiction in the particular case owing to the facts thereof. Thus before that Missouri appellate court the evidence was fully reviewed for a determination of whether it supported the findings of the trial judge. The St. Louis Court of Appeals opinion was relied on by the Missouri Supreme Court in denying the writ. In effect then before us is a judgment of conviction reviewed and affirmed by the State's highest court and a denial by that court of habeas relief from which petitioners have failed to seek a potential remedy now available to them -- certiorari in the United States Supreme Court. Brown v. Allen, 344 U.S. 443, 447-450, presupposes the requirement that certiorari be sought for direct review of the state judgment before the issues with respect to certiorari on collateral relief denied by the State's highest court come into focus. See also Irvin v. Dowd, 359 U.S. 394.

The review afforded a criminal contempt conviction by habeas corpus in the Missouri appellate proceeding is much broader than that to which petitioners would be entitled in a federal district court. It appears to this Court that if petitioners were successful in obtaining certiorari in the United States Supreme Court they might be entitled to the same scope of review as was afforded them in the Missouri appellate procedures since the state writ operates as an affirmance of a criminal contempt conviction as well as a denial of the traditional habeas relief sought.

Petitioners, both at their original trial and throughout their state habeas proceedings, raised federal constitutional questions which were decided adverse to their contentions by Missouri's highest court. This court, mindful of its rung in the federal ladder and with due regard for the comity between the federal and state court systems, in its discretion, declines to exercise jurisdiction and entertain the petitioners' writ for federal habeas relief, without the opportunity having been

filed presented to the United States Supreme Court to grant or deny a petition for certiorari to review in effect what is both an affirmance of a final judgment of conviction and a denial of habeas relief by the Missouri Supreme Court. That remedy is still open to petitioners.

Petitioners' writ of habeas corpus will be denied.

At the time the return to the order to show cause was filed, petitioners applied for bail pending a decision on their application for a writ of habeas corpus. We considered at the time that we had jurisdiction to exercise our discretion in the matter, Johnston v. Marsh (CA 3rd) 227 F.2d 528, although we denied the bail. At the close of the hearing on February 27, 1964, after this Court had indicated that it would deny the writs of habeas corpus in each of the cases, petitioners moved for admission to bail orally and by refiling their original application. Presumably petitioners' intent was to request bail pending relief from the order denying the writs of habeas corpus in these causes. The Court has treated the refiled motion as such and has denied the same. It should be remembered that whatever effect a petition for review by certiorari to the United States Supreme Court from the adverse decision of the Missouri Supreme Court denying the writ might have, the proceeding before this district court is a civil action in habeas corpus and is not, as such, an appeal from a criminal conviction. We are not here concerned either with bail pending trial or bail pending an appeal from a conviction. Habeas corpus is not governed by rules of criminal procedure. There are no unusual circumstances shown here to set aside the usual rule that bail can not be granted to a prisoner during appeal from a denial of post-conviction remedy, such as habeas corpus or coram nobis. Edwards v. United States, (9th CA), 286 F.2d 702, Refff v. United States, (9th CA), 288 F.2d 887. See also Carbo v. United States, (9th CA), 686, l.c. 690, certiorari denied 365 U.S. 861.

The Clerk is hereby ordered and directed to enter judgment in accordance with the above findings andconclusions.

Dated this 28th day of February, 1964.

s/
U.S. District Judge.

FOOTNOTES

1. The background of this controversy as set out in the St. Louis Court of Appeals opinion is substantially as follows:

On August 14, 1963, Robert Curtis wrote a letter which he signed as "Chairman of CORE" to the Jefferson Bank and Trust Company, St. Louis, Missouri. The letter advised the bank that the St. Louis Committee of Racial Equality had voted to take direct action against the bank if four full-time negroes were not hired in clerical or teller positions within two weeks. The bank replied on August 27th, advising that it was rejecting the request because it did not need four additional employees; it did not have applications from four qualified negroes; it was unwilling to discharge four presentemployees and hire four negroes becausethis would be discrimination and a violation of the Fair Employment Practices Act of the City of St. Louis. The bank urged CORE not to hold demonstrations interfering with its business operation which the bank had been informed were scheduled to start on August 30th.

On August 29th, the bank applied to the Circuit Court for a temporary restraining order. After hearing, Judge Scott issued on August 30th an order restraining certain named defendants as individuals and as representatives of a class known as the St. Louis Committee on Racial Equality from physically hindering, obstructing or interfering with other persons entering the bank's premises or transacting business in the interior of the bank. Defendants named in the restraining order were further ordered to show cause on September 26th why the temporary injunction should not issue. Some of the defendants were cited and convicted of criminal contempt for violating the restraining order on the date it was issued when one hundred or more persons entered the bank chanting, singing, locking arms, sitting down, lying down and thereby interfering with other persons' entry and transaction of business in the bank.

Again on October 4, 1963, andon October 7, 1963, the bank moved for the issuance of writs of attachment for the remaining petitioners and others alleging that notwithstanding notice of the restraining order, they had violated it by entering the bank, sitting on the floors, standing in front of the doors and thereby hindering the entrance and exit of the bank's customers. Judge Scott found that each petitioner had notice of the temporary restraining order and acted in concert and participation with and aided and abetted one or more defendants named in the restraining order and wilfully disobeyed and violated the restraining

order in certain particulars. Judge Scott found that their acts and conduct sontituted offenses against the "majesty of the law and the dignity and authority of this Court" and ordered them punished "as for criminal contempt".

Footnotes - continued

2. Petitioners chose to seek habeas corpus relief in the state court rather than the alternative remedy provided by Supreme Court of Missouri Rule 27.26. Mahurin v. Nash, 321 F. 2d 662.

IN THE SUPREME COURT OF THE STATE OF MISSOURI

In the Matter of:	)	
	)	
LOUIS FORD, IAN GRAND, BENJAMIN GOINS, ROBERTA TOURNOUR, TAYLOR JONES, KENNETH LEE and RONALD GLENN,	)	
Petitioners	)	
	)	
Versus	)	No. _____
	)	
MARTIN L. TOZER, Sheriff of the City of St. Louis, Mo. and WILLIAM BOEGER, Warden of City Jail	)	
	)	
Respondents	)	

APPLICATION FOR WRIT OF HABEAS CORPUS

Your petitioners, LOUIS FORD, IAN GRAND, BENJAMIN GOINS, ROBERTA TOURNOUR, TAYLOR JONES, KENNETH LEE, and RONALD GLENN, by their attorneys, respectfully represent that they are unlawfully restrained of their liberty by MARTIN L. TOZER, Sheriff of the City of St. Louis; and WILLIAM BOEGER, Warden of the City Jail of the City of St. Louis, pursuant to Judgments and Order of Commitments, of the Honorable Michael J. Scott, Judge, Division #2, St. Louis Circuit Court, rendered in Cause No. 57945-E, on the twenty-fifth day of October, 1963; that said imprisonment, detention and confinement are illegal in the following respects, to wit:

I

The Court lacked jurisdiction to try these Petitioners, for criminal contempt for the following reasons, to wit:

1. The violation of any of the court's restraining order by these alleged contemnors was a civil and not a criminal contempt. These proceedings were instituted and conducted, not by or in the name of the State as an independent action for an affront to the dignity of the court, but by the plaintiff below

as an auxiliary proceeding to its main suit to protect its property from continuing trespasses and to save itself from irreparable injury. It was based upon Plaintiff's Motion for issuance of attachment for contempt and plaintiff's counsel presented the evidence in the contempt proceedings. (See Ex. P-6).

2. No notice was ever served on these petitioners that would give them notice that they were being tried for criminal contempt.

3. There was no Application for Issuance of a Citation for Contempt and none was issued which charged these petitioners with any offense whatsoever.

4. The Motion for the Issuance of Attachment (Ex. P-6) and the Attachment Order (Ex. P-7) recited only the manner in which the Restraining Order had been violated, but did not inform the Petitioners of any contempt charge, either civil or criminal, against them, either individually or collectively, thereby denying to them due process of law under the Sixth and Fourteenth Amendments to the Constitution of the United States, and Article I, Sections 10 and 18a of the Constitution of the State of Missouri and thus conferred no jurisdiction upon the Court.

II

The Court lacked jurisdiction to render the particular Judgments of Contempt against these petitioners who are not named defendants nor members of the class in that:

1. The Application for Injunction (Ex. P-3) and the Temporary Restraining Order (Ex. P-4) as issued by the Court purport to bind only certain named defendants and others who are members of the Class, and Petitioners herein are not named

defendants or members of the class, therefore the Judgments of Contempt against these Petitioners are void as a matter of Law.

2. The Bond (Ex. P-5)does not purport to indemnify any persons except the named defendants in the Petition for Injunction and restraining order, hence the judgments of contempt against these Petitioners are void as a matter of Law.

3. The Court cannot enlarge the Indemnity Agreement which is in the nature of a Third Party Beneficiary contract between the bonding company and plaintiff bank to include persons not contracted for by them solely for the purpose of thrusting jurisdiction upon the Court, and the judgments of contempt are therefore void as a matter of Law.

III

The entire proceedings and trial constitute a denial to these petitioners of due process and equal protection of the laws as guaranteed to them by the Constitution of the United States and the 14th Amendment thereof, the 6th and 8th Amendments thereof and the Constitution of the State of Missouri, Article 1, Sections 10 and 18a. The said violations have been, among others, as follows:

1. The petitioners Ford, Grand, Goins, Tournour, Jones, Lee and Glenn were arrested about 5:00 p.m. on Friday, October 4, 1963 and were held by the St. Louis police without an opportunity to make bail or consult with counsel until the plaintiff bank could obtain attachments from the court which were then served upon petitioners about 8:00 p.m. that Friday evening.

2. Immediately thereafter petitioners were brought to Court and a hearing was held on the attachment over the objections of defense counsel.

3. The Attachment did not contain any notice of the charges against the petitioners.

4. At 8:00 P.M. or thereabouts, Friday, October 4, 1963, a hearing was held on said attachments over the objections of defense counsel and petitioners were forced to a hearing with no opportunity to make any preparation or defense or prepare evidence to disprove the charges.

5. At the conclusion of the hearing on the attachment, about 2:30 A.M., Saturday, October 5, 1963, the Court read a statement (Ex. P-8) wherein the Court found that Petitioners had not disproved the contempt and ordered petitioners to show cause on Monday, October 7, 1963, at 10:00 A.M. why they should not be punished for contempt.

6. The court proceeded to trial on Monday, October 7, 1963, without giving petitioners a reasonable opportunity to prepare a defense in that petitioners had no opportunity to file interrogatories, take depositions or obtain witnesses in their behalf, and received in evidence all testimony adduced at the hearing on the attachment.

7. Each petitioner was not advised of the nature of the proceedings against them, nor the specific acts which constituted an alleged contempt.

8. The application for citation, the attachment issued thereon and the trial procedures were for civil contempt and petitioners were punished for criminal contempt.

9. After trial the court imposed excessive fines of $500.00 and jail sentences from 60 days to one year.

10. After trial the court found petitioners guilty of criminal contempt and denied the bail pending a motion for re-hearing or pending appeal and denied them the right to appeal.

IV

The Trial Court lacked jurisdiction to issue its Restraining Order in that, to wit:

1. A labor dispute existed within the meaning and interpretation of the applicable Federal Statutes and decisions relating to labor relations. (Ex. P-1, P-2)

2. The Federal Government has pre-empted the field of labor disputes.

3 This case does not come within any of the exceptions to this rule which would confer jurisdiction upon the state courts.

4. The state court is without authority to enforce the racial discriminatory policy of any person or persons or of any private or public agency.

V

The Court exceeded its jurisdiction in rendering the particular judgments in that the fines and sentences are excessive and therefore constitute cruel and unusual punishment contrary to the 8th Amendment to the United States Constitution and Article 1, Section 21, of the Missouri Constitution.

VI

The Court exceeded its jurisdiction to try these petitioners for an alleged criminal contempt by its failure to follow procedures set forth in Supreme Court Rule 35.01, in that:

1. No notice was issued prior to the hearing on the attachment.

2. The statement by the court at the conclusion of the hearing on the attachment does not constitute notice within the meaning of Supreme Court Rule 35.01 in that it did not state the essential facts constituting the alleged criminal contempt and did not describe it as such and did not allow a reasonable

time for preparation of the defense.

3. No application for criminal contempt was made by the prosecuting attorney or an attorney appointed by the court for that purpose.

VII

The Court lacked jurisdiction to render the particular judgments committing these defendants to jail and assessing the fines against them in that, to wit:

1. The Findings of Fact and Judgments (Ex. P-9a to g) for each defendant is a mere statement of conclusions by the Court and hence is insufficient as a matter of law to support the judgment of the Court based thereon, as being contrary to the statutes and decisions of the law of Missouri.

2. The Commitment Order for each Petitioner (Ex. P-10a to g) is a mere statement of conclusions by the Court and hence insufficient as a matter of law to support the order of imprisonment by the Court based thereon being contrary to R.S. Mo. 1959 476.140 and Decisions of law of Missouri.

3. The Commitment Order of each Petitioner is a variance to the Findings of Fact and Judgment by the Court in that the Commitment Orders purport to commit to jail for an offense different in substance from the offense for which each petitioner was allegedly charged and found guilty, and therefore is voic as a matter of law to support the imprisonment based thereon.

VIII

Petitioners state that Sections 476.110 and 526.220, R.S. Mo. 1959, and Supreme Court Rule 35.01, under which the contempt proceedings were initiated against them are unconstitutional and void, and by reason thereof the judgments and orders of

commitment are void, in that:

1. Said statutes and rule are so vague, indefinite, and ambiguous that a person charged under them cannot determine what the nature of the charge is against him, what the proper procedure should be or what his rights are thereunder.

2. Said statutes and rule are so vague, indefinite and ambiguous that the state courts' application of them and the decisions as to proper procedure or meaning thereunder are in conflict.

3. Said statutes and rule, even if they are deemed to be constitutional, are unconstitutional as they have been applied to these petitioners in this instance, in that their rights to know the nature of the charge against them and to due process and equal protection of the law under Articles VI and XIV of the Constitution of the United States and Article I, Sections 10 and 18a of the Constitution of the State of Missouri, have been denied.

IX

Petitioners further state that no application for this particular relief sought has been made to or refused by any court, officer or officers superior to the one to whom this petition is presented.

WHEREFORE, your Petitioners pray that a Writ of Habeas Corpus issue as to each of the Alleged Contemnors, that they be discharged from their unlawful imprisonment, or that the Alleged Contemnors be admitted to bail pending a hearing of this proceeding on its merits and the Discharge of these defendants.

Louis Ford

Ian Grand

Benjamin Goins

Roberta Tournour

Taylor Jones

Kenneth Lee

Ronald Glenn

Petitioners

Clyde Cahill

Charles B. Oldham

Joseph S. McDuffie

ATTORNEYS FOR PETITIONERS

STATE OF MISSOURI)
) SS
CITY OF ST. LOUIS)

The affiants, Louis Ford, Ian Grand, Benjamin Goins, Roberta Tournour, Taylor Jones, Kenneth Lee, and Ronald Glenn, petitioners in the above and foregoing application for Writ of Habeas Corpus make oath and say that the facts and allegations stated in the above and foregoing application are true according to their best knowledge, information and belief.

_____
Louis Ford

_____
Ian Grand

_____
Benjamin Goins

_____
Roberta Tournour

_____
Taylor Jones

_____
Kenneth Lee

_____
Ronald Glenn

Subscribed and sworn to before me this _____ day of _____, 19_____.

_____
Notary Public within and for the City of St. Louis, State of Missouri.

My Commission expires _____.

IN THE CIRCUIT COURT, CITY OF ST. LOUIS

SEPTEMBER TERM, 1963

FRIDAY OCTOBER 4, 1963

Jefferson Bank and Trust Company, a Corporation,
vs 57945-E
Robert B. Curtis, et al.

Now this day comes Martin L. Tozer, Sheriff of the City of St. Louis and pursuant to the order of attachment this day ordered herein produces the bodies of Benjamin Goins, Kenneth Lee, Ronald Glenn, Taylor Jones, Billie Richardson, Louis Ford, Richard Pollock, Ethel Maxie, Roberta Tournour and Ina Grand.

Thereupon, the hearing on said attachment progresses before the Court and being terminated the same is submitted to the Court upon the pleading, the evidence and proof adduced and the Court having heard and duly considered the same and being sufficiently advised thereof doth find that said alleged contemnors, having been duly represented by counsel and having failed to disprove or purge themselves of said contempt by physically hindering and preventing customers of the plaintiff and other members of the public from customary access to tellers' windows by locking arms in front of the doors of plaintiff's place of business or in front of the tellers' windows in plaintiff's place of business, or sitting in, lying in, standing in or singing in plaintiff's place of business and thereby interfering with plaintiff's business or by harrassing plaintiff's employees or customers in front of, around or in plaintiff's place of business, and it further appearing to the satisfaction of the Court that Ethel Maxie, Richard W. Pollock and Billie Richardson are juveniles under the age of 17, and the Court having, before said hearing, due to illness, returned Billie Richardson to her natural mother to be produced in the Juvenile Court of the City of St. Louis upon notification to said parent and juvenile by the said Juvenile Court of the City of

St. Louis. It is therefore ordered that the other 2 juveniles namely Richard Pollock and Ethel Maxie shall be taken immediately and directly before the Juvenile Court or delivered to the Juvenile Officer, or person acting for him, by the Sheriff of the City of St. Louis, to remain subject to the jurisdiction of the Juvenile Court.

It is further ordered and adjudged by the Court that the Sheriff of the City of St. Louis commit the following alleged contemnors to the City Jail, unless said alleged contemnors forthwith give a good and sufficient bond in the following amounts as to each said alleged contemnor:

	(Written by hand)
Benjamin Goins	Bond set $1500.00 by Court.
Kenneth Lee	Bond set $1500.00 by Court
Ronald Glenn	Bond set $1500.00 by Court
Taylor Jones	Bond Set $5000.00 by Court
Louis Ford	Bond set $5000.00 by Court
Roberta Tournour	Bond set $1500.00 by Court
Ina Grand	Bond set $1500.00 by Court

It is further ordered by the Court that said alleged contemnors be and appear in this Court and in Division #2 thereof on Monday October 7, 1963 at 10:00 o'clock A.M. then and there to show cause, if any, why they should not be punished for contempt of Court in violation of the Courts restraining order heretofore issued the 30th day of August, 1963.

It is further ordered by the Court that the Sheriff make return to this Court how he executed this order of Court.

(signed) Michael J. Scott
Judge

STATE OF MISSOURI)
) SS
CITY OF ST. LOUIS)

THE STATE OF MISSOURI,

To Martin L. Tozer, Sheriff of the City of St. Louis, Missouri,

GRETTING:

We command that you do forthwith, without excuse of delay bring, or cause to be brought, before the Honorable Circuit Court of the City of St.Louis, and in Division No. 2 thereof, the bodies of any and all persons who shall with knowledge of temporary restraining order heretofore issued in this proceeding shall violate said restraining order by standing in, lying in, sitting in, singing in or walking in the Jefferson Bank and Trust Company,

particularly Benjamin Goins

By whatever names or additions that they are known or called, then and there to have them before the Court in Cause No. 57945 E wherein Robert B. Curtis, William L. Clay, Charles R. Oldham, and Marian Oldham, Lucien Richards, Richard Daly, Walter Hays, Rev. Charles Perkins, Norman Seay, Herman Thompson and Melvin West are defendants, and have [illegible]h you this writ return indorsed thereon, and herein fail not at your peril.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at office, in the City of St. Louis This day of , 1963.

PHELIN O'TOOLE
Clerk, Circuit Court

By: S/ Ferd Kaufman - Deputy

Division No. 2

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

Ex parte	)	
	)	
LOUIS FORD, IAN GRAND, BENJAMIN GOINS, ROBERTA TOURNOUR, TAYLOR JONES, KENNETH LEE and RONALD GLENN	)	No. _____
	)	HABEAS CORPUS

To the Honorable Roy W. Harper, James H. Meredith or John K. Regan
Judges

APPLICATION FOR A WRIT OF HABEAS CORPUS

Your Petitioners, Louis Ford, Ian Grand, Benjamin Goins, Roberta Tournour, Taylor Jones, Kenneth Lee, and Ronald Glenn state:

I.

That they are unlawfully restrained of their liberty and imprisoned by WILLIAM BOEGER, Warden of the City Jail of the City of St. Louis at St. Louis, Missouri, in violation of the Constitution of the United States.

II.

That said unlawful restraint is pursuant to certain Findings of Fact and Judgments and Orders of Commitment rendered on the 25th day of October, 1963, in a contempt proceeding before the Honorable Michael J. Scott, Judge, Division No. 2, St. Louis Circuit Court, in Cause No. 57945 E.

III.

The jurisdiction of this Court is invoked pursuant to Title 28, Section 2241 et seq., United States Code. All adequate State remedies available to Petitioners have been exhausted by them. The legality of the imprisonment of the Petitioners was presented to and adjudged by the St. Louis Court of Appeals in a Habeas Corpus Proceeding (See Exhibit P-12); however, an Application for a Writ of Habeas Corpus to the Supreme Court of Missouri was denied (See Exhibit P-13); further, Petitioners state that no Application for a Writ of Habeas Corpus has been made to any Federal Courts of the United States.

IV.

The facts concerning the Petitioners' commitment and restraint are as follows:

1. The Petitioners have been sentenced to definite terms ranging from 60 days to one (1) year in the City Jail in the City of St. Louis, Missouri, and fined Five Hundred Dollars ($500.00) each and ordered to pay one-seventh (1/7) of the Court costs. (See Findings of Fact and Judgments and Orders of Commitment, Exhibits P1 A-G and P2 A-G)

2. The background of the convictions stem from a suit for injunction filed by the Jefferson Bank and Trust Company in the St. Louis Circuit Court on the 29th day of August, 1963. (See Exhibit P-3). That case is styled according to the Petition for Injunction as follows:

(a) "Jefferson Bank and Trust Company, a corporation, Plaintiff vs Robert B. Curtis, William L. Clay, Charles R. Oldham, Marian Oldham, Lucien Richards, Clyde S. Cahill, Jr., Richard Daly, Walter Hays, Rev. Charles Perkins, Norman Seay, Herman Thompson, and Melvin West, individually and as representatives of a class known as St. Louis Committee of Racial Equality, defendants," being Cause No. 57945 E.

(b) The Summons as prepared and served in said Cause was as follows:

"The State of Missouri to defendants Robert B. Curtis, William L. Clay, Charles R. Oldham, and Marian Oldham, Lucien Richards, Clyde S. Cahill, Jr., Richard Daly, Walter Hays, Rev. Charles Perkins, Norman Seay, Herman Thompson, Melvin West, individually and as representatives of a class known as St. Louis Committee of Racial Equality."

(c) The Return of Service on the Summons as made by MARTIN L. TOZER, Sheriff, dated August 30, 1963, is as follows:

"I hereby certify that I have served the within summons (1) by delivering on the 30th day of August, 1963, a copy of the summons and a copy of the Petition to each of the within named defendants, Robert B. Curtis, William L. Clay, Marian Oldham, Lucien Richards, Rev. Charles Perkins, Norman Seay, Herman Thompson, individually and as representatives of a class known as St. Louis Committee of Racial Equality. After due and diligent search in the City of St. Louis, Missouri, the following defendants could not be found in the City of St. Louis, Missouri, Melvin West, Richard Daly, and Walter Hays."

(d) In Paragraphs two (2) and three (3) of the body of the petition for injunction filed by plaintiff bank reference is made to the defendants individually and as representatives of the St. Louis Committee of Racial Equality.

(e) In paragraphs one (1) and two (2) of the Prayer in plaintiff bank's petition for an injunction are found the following:

"(1) That this court issue its restraining order, restraining and enjoining the defendants and each of them and all persons acting by, through, or under them, and every other person or persons acting under the direction or instruction or in concert with them from . . ."

"(2) That with or without issuing its restraining order as prayed above, and with or without an order to show cause, this Court issue its temporary injunction restraining and enjoining the defendants and all other persons mentioned above in said paragraph one (1) of this prayer." (See Exhibit P-3)

(f) At 1:55 p.m., Friday, August 30, 1963, the court issued a temporary restraining order, the first paragraph of which is as follows:

"In the Circuit Court of the City of St. Louis, State of Missouri, Jefferson Bank and Trust Company, a corporation plaintiff vs. Robert B. Curtis, et al #57945 E Division No. 2 Temporary restraining order to issue as to all defendants individually and as representatives of a class known as St. Louis Committee of Racial Equality from . . . " (See Exhibit P-4)

3. The Saint Louis Committee of Racial Equality commonly referred to as CORE, is a branch of the national organization known as the Congress of Racial Equality. St. Louis CORE has sought to alleviate racial discrimination in public accommodations, housing, government, business and particularly in the area of employment where it has sought to improve working conditions and equal employment opportunities for Negroes by establishing standards of equal employment and equal promotional practices.

(a) The plaintiff, Jefferson Bank and Trust Company, is a federally insured bank engaged in substantial interstate commerce.

(b) For a period of three or four years, St. Louis CORE had negotiated with Jefferson Bank in an attempt to secure jobs for Negroes and opportunities for equal advancement and promotion

for Negroes. About August 14, 1963, St. Louis CORE wrote a letter to the Jefferson Bank and Trust Company asking the bank to employ four (4) Negroes in clerical capacities. The Jefferson Bank replied with a written communication denying the request. (See Exhibits P-5 and P-6). Later, St. Louis CORE sent a committee to the bank for a conference urging the bank to act favorably upon the request for the employment of Negroes. The bank refused to hire four Negroes or consider alternate plans for the hiring of Negroes presented by the CORE committee.

4. The Petitioners herein were not parties to the suit for injunction filed on August 29, 1963, were not members of the class known as St. Louis CORE and were not named in the restraining order and subsequently were not made parties to said suit or named in the restraining order and were not covered by the terms of the indemnity bond filed by the bank nor has said bond been enlarged to involve those Petitioners. (See Exhibit P-7).

5. On Friday, October 4, 1963, the Petitioners went to the Jefferson Bank and Trust Company and entered said bank about 4:15 p.m. carrying signs reading "4 JOBS." Inside the bank they sang freedom songs, locked arms, sat and stood in front of the entrances to the bank. Petitioners were arrested about 5:20 p.m., taken to police headquarters and charged with peace disturbance and with trespassing.

6. While Petitioners were at police headquarters, from 5:30 to 8:00 p.m., numerous requests were made by some of them to call relatives and confer with counsel. These requests were denied.

7. About 8:00 p.m., Friday, October 4, 1963, while Petitioners were still in custody of the police authorities, they were served by the Sheriff of the City of St. Louis with a body attachment. (See Exhibit P-8). Petitioners were then taken immediately by the Sheriff to Division 2 of the Circuit Court of the City of St. Louis and ordered to trial forthwith at 10:00 p.m.; the Court

heard testimony of three witnesses on behalf of the plaintiff bank, admitted Petitioners to bail in varying amounts ranging from $1500.00 to $5000.00 at 3:00 a.m., Saturday morning, October 5, 1963, (See Exhibit P-9)and continued said cause to Monday, October 7, 1963, at 10:00 a.m. for further hearing; but at no time were Petitioners notified, either orally or in writing, of any charges of criminal contempt made against them.

8. On Monday, October 7, 1963, Petitioners objected to proceeding to trial on the ground that no citation had been filed or charges made against these Petitioners, and hence they did not know what they were to defend against. Petitioners were overruled. Petitioners then made a request for time within which to file an Application for a Writ of Prohibition in the St. Louis Court of Appeals and were granted until 2:00 p.m. that same day to do so. The Writ was denied; and thereupon, Petitioners promptly filed their written motion for dismissal of the Proceeding. Said motion was overruled and the Court proceeded to trial. (See Exhibit P-10). The attorney for the plaintiff bank stated in open court that Petitioners were being tried in a civil proceeding. The Court failed to advise Petitioners, despite repeated requests, of the nature of the proceedings and the specific charges against them. (See Exhibit P-11).

9. Petitioners were found guilty and "punished as for criminal contempt" and committed on the 25th day of October, 1963, to the City Jail of St. Louis, Missouri, on fines ranging from 60 days to one year in the City Jail where they have since remained in custody of the Warden of said Jail, except for the period of time they were admitted to bail pending a Habeas Corpus Proceeding in the St. Louis Court of Appeals.

10. All Exhibits named herein are attached to this application and made a part hereof.

V.

That by reason of the foregoing facts, Petitioners' restraint is illegal and contrary to the provisions of the Constitution of the United States of America in that Petitioners have been denied due process of law and the equal protection of the law contrary to the Fourteenth Amendment of the United States Constitution.

(1) By reason of charging these Petitioners with contempt of a restraining order when the court had specifically excluded them from the provisions of the restraining order;

(2) By reason of the Supreme Court of Missouri having failed and refused to resolve the conflict in opinions between the Springfield Court of Appeals and the St. Louis Court of Appeals on the interpretation of Supreme Court Rule 92.09, R.S. Mo. 1959, Section 526.070 as to the requirements of the indemnity bond;

(3) By reason of abridging the obligation of contract by its interpretation of R.S. Mo. 1959, Section 526.070 which set the requirements of an indemnity bond for jurisdiction of the trial court in the injunction proceeding;

(4) By reason of the Court so applying R.S. Mo. 1959, Sections 476.110-476.140 and Supreme Court Rules 35.01 and 92.15 in such a way that these Petitioners were tried for civil contempt but found guilty of criminal contempt;

(5) By reason of Petitioners having been effectively denied a review by appeal in the appellate courts and Petitioners having to remain in jail while seeking a review of their convictions and detention in a Habeas Corpus proceeding;

(6) By reason that Petitioners received no notice oral or written, that they were being tried for criminal contempt; with no opportunity to purge themselves, no time to adequately consult with counsel and effectively prepare their defense by taking depositions, examination of movies, recordings and records of the bank.

(7) By reason of using a temporary restraining order to enforce against Petitioners, and in aid of the racial discriminatory hiring policy of a federally insured bank engaged in substantial interstate commerce where the terms and conditions of employment were involved; and

(8) By reason of excessive fines and sentences, all of which constitute a denial of the equal protection of the law, a deprivation of Petitioners' liberty without due process of law, an abridgement of the right to contract, a denial of freedom of speech and cruel and unusual punishment in violation of the First, Sixth, Tenth, and Fourteenth Amendments of the Constitution of the United States, and Article 1, Section 10, 18a, 20, and 21 of the State of Missouri.

(9) By reason of the court ignoring the jurisdictional requirements throughout these Proceedings.

WHEREFORE, Petitioners pray that the Court grant the within Application and that a Writ of Habeas Corpus be ordered to issue to William Boeger, Warden of the City Jail of the City of St. Louis and requiring him to produce the Petitioners forthwith before this Court as is by statute provided; that Petitioners be discharged from their unlawful imprisonment; or that Petitioners be admitted to bail forthwith pending a hearing of this proceeding on its merits and the discharge of these Petitioners.

_____
Louis Ford

_____
Ian Grand

Attorneys for Petitioners:

_____
Benjamin Goins

_____
Robert L. Witherspoon

_____
Roberta Tournour

_____
Charles R. Oldham

_____
Taylor Jones

_____
Joseph S. McDuffie
2847 Union Blvd. CO 1-4230

_____
Kenneth Lee

Of Counsel:
Robert E. Wilson, Jr.
Clyde S. Cahill
Emanuel Williams (Counsel All of
Margaret B. Wilson, the City of

_____
Ronald Glenn

STATE OF MISSOURI)
) SS.
CITY OF ST. LOUIS)

The Affiants, Louis Ford, Ian Grand, Benjamin Goins, Roberta Tournour, Taylor Jones, Kenneth Lee, and Ronald Glenn, Petitioners in the above and foregoing Application for Writ of Habeas Corpus make oath and say that the facts and allegations stated in the above and foregoing Application are true according to their best knowledge, information and belief.

_____
Louis Ford

_____
Ian Grand

_____
Benjamin Goins

_____
Roberta Tournour

_____
Taylor Jones

_____
Kenneth Lee

_____
Ronald Glenn

Subscribed and sworn to before me this _____ day of _____, 19 _____.

_____
Notary Public within and for the City of St. Louis, State of Missouri.

My Commission expires:_____.

INDEX TO EXHIBITS --- SECOND SEVEN

P - 1a	Findings of Fact and Judgment,	Louis Ford
b		Ian Grand
c		Benjamin Goins
d		Roberta Tournour
e		Taylor Jones
f		Kenneth Lee
g		Ronald Glenn
P - 2a	Commitment Order,	Louis Ford
b		Ian Grand
c		Benjamin Goins
d		Roberta Tournour
e		Taylor Jones
f		Kenneth Lee
g		Ronald Glenn

P - 3 Petition for Injunction

P - 4 Restraining Order

P - 5 Letter of August 14, 1963, Robert Curtis to Jefferson Bank and Trust Co.

P - 6 Letter of August 27, 1963, Wayne Millsap to Robert Curtis

P - 7 Certification of Injunction Bond

P - 8 Body Attachment

P - 9 Court Order Setting Bail

P - 10 Motion For Dismissal

P - 11 Portion of Transcript Designated "Appendix C"

P - 12 Answer to Return of Writ of Habeas Corpus Filed in St. Louis Court of Appeals and Opinion of Said Court.

P - 13 Application for Writ of Habeas Corpus Filed in the Supreme Court of Missouri and Its Order Denying the Writ.

MAR 4 1964

IN THE UNITED STATES COURT OF APPEALS
EIGHTH CIRCUIT

IN THE MATTER OF THE PETITION OF MICHELA GRAND, DANIEL POLLOCK AND JAMES PEAKE, JR. FOR A WRIT OF HABEAS CORPUS	))))	No. 17601

APPLICATION FOR A CERTIFICATE OF PROBABLE CAUSE

COME now MICHELA GRAND, DANIEL POLLOCK and JAMES PEAKE, JR., petitioners in the above entitled cause and herewith make their application for a Certificate of Probable Cause to the United States Court of Appeals or one of the Honorable Justices thereof, and as reasons therefor state as follows:

1. On the 6th day of February, 1964, Petitioners filed their Application for A Writ of Habeas Corpus in the United States Federal District Court for the Eastern District of Missouri, Eastern Division, seeking discharge from their unlawful restraint in the City Jail of the City of St. Louis, Missouri, by William Boeger, Warden of said jail pursuant to a sentence of confinement inposed by a judgment in the Circuit Court of the City of St. Louis in violation of their constitutional rights under the Constitution of the United States.

2. On the 11th day of February, 1964, the Honorable John K. Regan, Judge of Division No. 3 of said Federal District Court issued a Show Cause Order to the respondent warden in the following language, to-wit:

> "Good cause appearing upon reading the petition on file herein, it is
> ORDERED that William Boeger, Warden of the City Jail of the City of St. Louis, Missouri, appear before the Court on the 17th day of February, 1964, at the hour of 10 o'clock A.M., on thatday, in Courtroom No. 3, to show cause, if any he has why a writ of habeas corpus should not issue herein as prayed . . ."

thereby acknowledging that these petitioners had raised meritorious constitutional questions as to their alleged unlawful restraint.

3. Thereafter, on the 14th day of February, 1964, respondent filed his motion for an extension of time within which to file his return to the Show Cause Order, which motion was granted on the same

day and the time extended to the 20th day of February, 1964.

4. On the 20th day of February, 1964, all parties appeared in court by their respective attorneys, at which time respondent filed his return and the Court set the cause for hearing on the 27th day of February, 1964 at 1:30 P.M. On that same day, to-wit, February 20, 1964, petitioners filed their application to the court for admissio: to bail. The court in its order that same day, denying the applicatic for bail stated in part:

> ". . . The Court has considered the matters set out in the application for bail, including the lack of adequate redress if it is determined that their detention violates their constitutional rights and the possibility of the issues raised becoming meet by reason of the expiration of the petitioners' sentences prior to a decision on the merits of the alleged federal constitutional deprivations. A hearing on the merits has been set for February 27, 1964. The Court will endeavor to decide the issues with as much dispatch as judicial consideration permits in order to insure that the detention of these petitioners will not continue if it is found that their trial violated their federal constitutional rights . . ."

thereby further leading all parties to believe that a hearing on the merits would be held on the 27th day of February, 1964.

5. Thereafter, on the 27th day of February, 1964, the court after questi ning counsel for both parties in open court issued the following order: "In all three of these causes we have concluded not to exercise our discretion, and the writs of habeas corpus will be denied".

6. There are real and substantial questions as to whether petitioners have been denied due process, equal protection of the laws and other rights guaranteed under the Federal Constittution and this substantive right cannot be tested unless these petitioners are admitted to bail or granted a stay of execution because the sentences imposed are not appealable and the commitments for a definite term will be satisfied by being served in jail before petitioners can have a hea: ing on the merits and a decision thereon, and if such decision is adverse as to them to take all necessary procedural steps to make an appeal to the Supreme Court of the United States.

7. petitioners' substantive rights of ... due process, equal protection of the laws and other constitutional rights are of no avail unless this court grants this certificate of probable cause and the ancillary right of bail or stay of execution whereby they may test their substantive rights in this court.

8. The District Court has abused its discretion in refusing to "Summarily hear and determine the facts, and dispose of the matter as law and justice require." (Title 28 U.S.C.A. Sec. 2243)

9. That the petitioners' Application for a Certificate of Probable Cause to the Honorable John K. Regan, Judge of Division No. 3 of the Federal District Court was denied.

WHEREFORE, for the reasons stated, petitioners pray that a Certificate of Probable Cause be issued by this Honorable Court or by one of the Honorable Justices thereof.

s/ _____
Michela Grand

s/ Daniel Pollock

s/ _____
James Peake, Jr.

Attorneys for Petitioners:

s/ _____
Robert E. Wilson, Jr.

s/ _____
Robert L. Witherspoon

s/ _____
Wyvetter H. Younge
2847 Union Blvd. CO 1-0393

Of Counsel:

Joseph S. McDuffie
Clyde S. Cahill
Charles R. Oldham
Margaret B. Wilson
Robert Ratermann
All of the City of St. Louis

STATE OF MISSOURI)
) SS
CITY OF ST. LOUIS)

The affiants, petitioners in the above entitled cause make oath

and say that the allegations made in the foregoing Application for Certificate of Probable Cuase are true according to their best knowledge and belief.

s/
Michela Grand

s/
Daniel Pollock

s/
James Peake, Jr.

Subscribed and sworn to before me this 28th day of February, 1964.

s/ Robert E. Wilson Jr.
Notary Public

My commission expires 4-21-67

IN THE SUPREME COURT OF THE STATE OF MISSOURI

In the Matter of: MICHELA GRAND, DANIEL POLLOCK, and JAMES PEAKE, JR. Petitioners Versus MARTIN L. TOZER, Sheriff of the City of St. Louis, and WILLIAM BOEGER, Warden of the Municipal Jail, City of St. Louis, Respondents	)	No. _____

APPLICATION FOR WRIT OF HABEAS CORPUS

Your Petitioners, Michela Grand, Daniel Pollock, and James Peake, Jr., respectfully represent that they are unlawfully restrained of their liberty by MARTIN L. TOZER, Sheriff of the City of St. Louis, and WILLIAM BOEGER, Warden of the City Jail of the City of St. Louis, pursuant to Judgments and Orders of Commitments of the Honorable Michael J. Scott, Judge, Division 2, St. Louis Circuit Court, rendered in Cause No. 57945-E, on the twenty-fourth day of October, 1963; that said imprisonment, detention and confinement are illegal in the following respects to wit:

I

The Court lacked jurisdiction to try these Petitioners for criminal contempt for the following reasons, to wit:

1. The violation if any of the court's restraining order, by these Petitioners was a civil and not a criminal contempt. These proceedings were instituted and conducted, not by or in the name of the State as an independent action for an affront to the dignity of the court, but by the plaintiff below as an auxiliary proceeding to its main suit to protect its property

from continuing trespasses and to save itself from irreparable injury. It was based upon Plaintiff's Motion for issuance of attachment (Ex. P-6) and the Attachment (Ex. P-7), and Plaintiffs counsel presented the evidence in the contempt proceedings.

2. The Motion for Issuance of attachment for Contempt (Ex. P-6) was signed by an attorney who was not appointed by the court to institute these proceedings.

3. The affiant of the Motion for the Issuance of Attachment (Ex. P-6) sworn to the truth of the facts therein 3 days before the acts complained of.

4. The Petitioners were forced to trial on Monday, October 14, 1963 without a reasonable opportunity to prepare a defense in that petitioners' counsel had been in trial in the same court during the preceding week, that there was no opportunity to file interrogatories, take depositions and secure witnesses to appear on behalf of the petitioners all in violation of procedures set forth in Supreme Court Rules 35.01 and 6th, 8th and 14th Amendments to the Constitution of the United States and Article 1, Section 10 and 18a of the Constitution of the State of Missouri.

II

The Court lacked jurisdiction to render the particular Judgments of Contempt against these petitioners who are not named defendants nor members of the class in that;

1. The Application for Injunction (Ex. P-3) and the Temporary Restraining Order (Ex. P-4) as issued by the Court purport to bind only certain named defendants and others who are members of the Class, and Petitioners herein are not named defendants or members of the class, therefore the Judgments of Contempt against these defendants are void as a matter of law.

2. The Bond (Ex. P-5) does not purport to indemnify any persons except the named defendants in the Petition for Injunction and Restraining Order, and the judgments of contempt against these Petitioners are therefore void as a matter of Law.

3. The Court cannot enlarge the Third Party Beneficiary contract between the bonding company and plaintiff bank to include persons not contracted for by them solely for the purpose of thrusting jurisdiction upon the Court, and the judgments of contempt are therefore void as a matter of Law.

III

The Trial Court lacked jurisdiction to issue its Restraining Order in that, to wit:

1. A labor dispute existed within the meaning and interpretation of the applicable Federal Statutes and decisions relating to labor relations. (Ex. P-1, P-2)

2. The Federal Government has pre-empted the field of labor disputes.

3. This case does not come within any of the exceptions to this rule which would confer jurisdiction upon the state courts.

4. The state court is without authority to enforce the racial discriminatory policy of any person or persons or of any private or public agency.

IV

The Court exceeded its jurisdiction in rendering the particular judgments in that the fines and sentences are excessive and therefore constitute cruel and unusual punishment contrary to the 8th Amendment to the United States Constitution and Article 1, Section 21, of the Missouri Constitution

V

The Court exceeded its jurisdiction to try these petitioners for an alleged criminal contempt in that, to wit:

1. The trial Court violated the law and public policy of the State of Missouri as expressed in the Constitution of Missouri, Article 1, Section 10, the R.S. Mo. 1959, Section 56.110, and the decisions of the Appellate Courts by appointing two interested parties to prosecute an alleged criminal contempt proceeding.

2. The Trial Court overruled Petitioners' Motion to require the alleged prosecutors to reveal their interest in this case.

VI

The Court lacked jurisdiction to convict these Petitioners of criminal contempt. or any contempt, for the reason that said petitioners were business invitees for whom the plaintiff specifically opened its doors, let into the bank, and a charge of twenty-five cents for each transaction; that plaintiff is estopped to deny that petitioners presence in the bank and transactions were bona fide, since petitioners were not in violation of said restraining order, and were not interfering with the banking business, and thereby petitioners were denied equal protection of the law by being charged and convicted of contempt of court.

VII

Petitioners state that Sections 476.110 and 526.220, RS Mo., 1959, and Supreme Court Rule 35.01, under which the contempt proceedings were initiated against them are unconstitutional and void, and by reason thereof the judgments and orders of commitment are void, in that:

1. Said statutes and rule are so vague, indefinite, and

ambiguous that a person charged under them cannot determine what the nature of the charge is against him, what the proper procedure should be or what his rights are thereunder.

2. Said statutes and rule are so vague, indefinite and ambiguous that the state courts' application of them and the decisions as to proper procedure or meaning thereunder are in conflict.

3. Said statutes and rule, even if they are deemed to be constitutional, are unconstitutional as they have been applied to these petitioners in this instance, in that their rights to know the nature of the charge against them and to due process and equal protection of the law under Articles VI and XIV of the Constitution of the United States and Article I, Sections 10 and 18a of the Constitution of the State of Missouri, have been denied.

VIII

The Court lacked jurisdiction to render the particular judgments committing these defendants to jail and assessing the fines against them in that, to wit:

1. The Findings of Fact and Judgments for each defendant (Ex. P-8a,b,c) is a mere statement of conclusions by the Court and hence is insufficient as a matter of law to support the judgment of the Court based thereon, as being contrary to the statutes and decisions of law of Missouri.

2. The Commitment Order for each Petitioner (Ex. P-9a,b,c) is a mere statement of conclusions by the Court and hence is insufficient as a matter of law to support the judgment of imprisonment by the Court based thereon as being contrary to the Statutes and Decisions of law of Missouri.

3. The Commitment Order of each Petitioner is at variance to the Findings of Fact and Judgment by the Court in that the Commitment Orders purport to commit to jail for an offense different in substance from the offense for which each petitioner was allegedly charged and found guilty, and therefore is void as a matter of law to support the imprisonment based thereon.

IX

Petitioners further state that no application for this particular relief sought has been made to or refused by any court, officer or officers superior to the one to whom this petition is presented.

WHEREFORE, your Petitioners pray that a Writ of Habeas Corpus issue as to each of the Alleged Contemnors, that they be discharged from their unlawful imprisonment, or that the Alleged Contemnors be admitted to bail pending a hearing of this proceeding on its merits and the Discharge of these defendants.

_____
Michela Grand

_____
Daniel Pollock

_____
James Peake, Jr.

Petitioners

_____
Robert E. Wilson, Jr.

_____
Wyvetter Hoover Younge

_____
Billie Jones

Attorneys for Petitioners

STATE OF MISSOURI)
) SS
CITY OF ST. LOUIS)

The affiants, Michela Grand, Daniel Pollock, and James Peake, Jr., petitioners in the above and foregoing application for Writ of Habeas Corpus make oath and say that the facts and allegations stated in the above and foregoing application are true according to their best knowledge, information and belief.

_____
Michela Grand

_____
Daniel Pollock

_____
James Peake, Jr.

Subscribed and sworn to before me this _____ day of _____, 19____.

_____
Notary Public within and
for the City of St. Louis,
State of Missouri.

My Commission expires _____.

IN THE SUPREME COURT OF THE STATE OF MISSOURI

In the Matter of:	)	
	)	
MICHELA GRAND, DANIEL POLLOCK and JAMES PEAKE, JR.,	)	
	)	
Petitioners,	)	
	)	
Versus	)	NO. _____
	)	
MARTIN L. TOZER, Sheriff of the City of St. Louis, and WILLIAM BOEGER, Warden of the Municipal Jail, City of St. Louis,	)	
	)	
Respondents.	)	

POINTS AND AUTHORITIES

A

THE COURT ERRED IN ASSUMING JURISDICTION OVER THE SUBJECT MATTER

I

THE COURT LACKED JURISDICTION TO TRY THESE PETITIONERS FOR CRIMINAL CONTEMPT

1. The violations, if any, of the Court's Restraining Order by these Petitioners was a civil contempt and not a criminal contempt.

2. The Trial Court violated the Law and Public Policy of the State of Missouri as expressed in the Constitution of Missouri, Article I, Section 10, the R.S. Mo. 1959, Section 56.110, and the decisions of the appellate courts by appointing two interested parties to prosecute an alleged criminal contempt proceeding.

State vs. Bowenkampt, 39 SW (2) 753
Department of Health vs. Roselle, 34 N.J. 331, 169 A (2) 153

II

THE COURT LACKED JURISDICTION TO ISSUE ITS RESTRAINING ORDER.

1. A labor dispute involving unfair labor practices concerning the terms and conditions of employment are within the pre-empted field of the Federal Government where the business involved is engaged in Interstate Commerce.

2. The enforcement of the racial discriminatory hiring policy of plaintiff bank by the use of the courts injunctive power is within the prohibition of the 14th Amendment to the Constitution of the United States and therefore violates these Petitioners' rights thereunder.

National Labor Management Relations Act, Title 29 USCA. Sec. 7 et seq. & Amendments thereto
New Negro Alliance vs. Sanitary Grocery Co., 303 U.S. 552
Garner vs. Teamsters, Chauffeurs & Helpers Union, 74 S.Ct. 161
Guss vs. Utah Labor Relations Board, 77 S. Ct. 598

III

THE STATUTES UNDER WHICH THESE PETITIONERS WERE TRIED AND CONVICTED ARE UNCONSTITUTIONAL, AND HAVE BEEN UNCONSTITUTIONALLY APPLIED TO THESE PETITIONERS.

State vs. Lanesboro Product and Hatchery Co. 221 Minn. 246, 21 NW (2) 792, 163 ALR 1108, 99 ALR 607

B.

THE COURT ERRED BY EXCEEDING ITS JURISDICTION IN RENDERING THE PARTICULAR JUDGMENTS.

I

THIS RESTRAINING ORDER, CONTEMPT PROCEEDING AND ANY JUDGMENT BASED THEREON ARE VOID AS TO THE PETITIONERS FOR WANT OF A VALID INJUNCTION BOND.

R.S. Mo. 1959, Sec. 526.070, Sup. Ct Rule 92.09
Ex Parte Dillon, 96 SW 2d. 1095
Contra: Jefferson Bank & Trust Co. vs. Robert Curtis, et al, St. Louis Court of Appeals #31777 (not yet reported)

II

THE FINES AND SENTENCES ARE EXCESSIVE AND THEREFORE CONSTITUTE CRUEL AND UNUSUAL PUNISHMENT WITHIN THE PROHIBITIONS OF THE EIGHTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION AND ARTICLE I, SECTION 21 of THE MISSOURI CONSTITUTION

State ex rel Hawkins vs. Utley, 124 SW 2d 685
Carder vs. Carder, 61 SW 2d 391
Osborne vs. Purdome, 250 SW 2d 159
Carey, et al vs. District Court of Jasper County, 285 N.W. 236
Ex parte Fartenbury, 101 P 2d 105
Busch Jewelry Co., Inc. v. Silver, et al 8 NYS 592
Fansteel Metallurgical Corp. v. Lodge 60, 14 NE 2d 991
Gompers et al vs. Bucks Stove & Range Co., 221 US 418

III

THE FINDINGS OF FACT AND JUDGMENTS AND THE COMMITMENT ORDERS ARE INSUFFICIENT AS A MATTER OF LAW AND ARE VOID. See Ex. P-9 a-g & P-10 a-g)

R.S. Mo. 1959, Sections 476.110 and 476.140
Sup. Ct. Rule 35.01
Glenn vs. Hendrix, 349 SW 2d 532
Scott vs. Davis, 328 SW 2d 394
G_____ vs. Souder, 303 SW 2d 883

C.

THE ENTIRE PROCEEDINGS AND TRIAL CONSTITUTE A DENIAL TO THESE PETITIONERS OF DUE PROCESS AND EQUAL PROTECTION OF THE LAWS AS GUARANTEED TO THEM BY THE CONSTITUTION OF THE UNITED STATES AND THE SIXTH, EIGHTH, AND FOURTEENTH AMENDMENTS THEREOF, AND THE CONSTITUTION OF THE STATE OF MISSOURI, ARTICLE I, SECTIONS TEN AND EIGHTEEN (a) THEREOF. See Appendix C.

Sup. Ct. Rule 35.01; R.S. Mo. 1959, Sec. 56.110
Gompers vs. Bucks Stove & Range Co., 221 U.S. 418, 31 S.Ct. 492
State vs. Bockman, 253 SW 2d 607
State vs. Bowenkampt, 39 SW 2d 753
Sands vs. Richardson, 252 SW 990, 41 ALR 2d 1263, Sub-par. 4
In re Barger, 365 SW (2) 89

MSS SEDFRE
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Jefferson Bank & Trust vs Curtis, Robert L. et al (Folder 3)

August, 1963 - May, 1965

Box 3
Folder 3

State Historical Society of Wisconsin

Please Retain Original Order

IN THE ST. LOUIS COURT OF APPEALS

JANUARY SESSION, 1964

In the Matter of:	)	
	)	
ROBERT B. CURTIS, WILLIAM L. CLAY,	)	
CHARLES R. OLDHAM,	)	
MARIAN OLDHAM, LUCIEN RICHARDS,	)	No. 31,777
REV. CHARLES PERKINS, NORMAN SEAY,	)	
HERMAN THOMPSON, and RAYMOND HOWARD,	)	HABEAS CORPUS
	)	
Petitioners,	)	
	)	
vs.	)	
	)	
MARTIN L. TOZER, Sheriff of the	)	OPINION FILED
City of St. Louis, and	)	
WILLIAM BOEGER, Warden of the	)	January 15, 1964
Municipal Jail, City of St. Louis,	)	
	)	
Respondents.	)	

In the Matter of:	)	
	)	
LOUIS FORD, IAN GRAND,	)	
BENJAMIN GOINS, ROBERTA TOURNOUR,	)	No. 31,778
TAYLOR JONES, KENNETH LEE and	)	
RONALD GLENN,	)	HABEAS CORPUS
	)	
Petitioners,	)	
	)	
vs.	)	
	)	
MARTIN L. TOZER, Sheriff of the	)	OPINION FILED
City of St. Louis, and	)	
WILLIAM BOEGER, Warden of the	)	January 15, 1964
Municipal Jail, City of St. Louis,	)	
	)	
Respondents.	)	

In the Matter of:	)	
	)	No. 31,779
MICHELA GRAND, DANIEL POLLACK, and JAMES PEAKE, JR.,	)	HABEAS CORPUS
	)	
Petitioners,	)	
	)	
vs.	)	
	)	
MARTIN L. TOZER, Sheriff of the City of St. Louis, and WILLIAM BOEGER, Warden of the Municipal Jail, City of St. Louis,	)	OPINION FILED
	)	January 15, 1964
	)	
Respondents.	)	

Original proceedings in habeas corpus. Petitioners seek their release from detention by the respondent Sheriff and the respondent Warden who hold the petitioners in compliance with certain orders of the circuit court following an adjudication by that court that petitioners were guilty of criminal contempt. The sentences and fines imposed vary among the 19 petitioners and will be fully set out later herein.

The circuit court had issued an injunction pertaining to certain activities at or near the Jefferson Bank and Trust Company in the City of St. Louis, and the contempt citations arose out of alleged violations of that injunction. These alleged violations occurred upon different dates and involved different petitioners on each date. Thus, our No. 31,777 encompasses the 9 petitioners who are alleged to have first violated the injunction; No. 31,778 refers to the 7 petitioners who are alleged to have next committed contemptuous acts; and No. 31,779 encompasses the petitions for habeas corpus filed by the 3 alleged contemnors whose acts, in point of time, last occurred.

It seems wise to place those facts applicable to all 3 consolidated files in some sort of chronological perspective. The petitioner Curtis wrote a letter dated August 14, 1963 to the Jefferson Bank and Trust Company which he signed "Chairman of CORE." The first paragraph of that letter reads as follows: "As a result of our conversation last week and the report given by Rev. Charles Perkins and me, the Saint Louis Committee of Racial Equality voted to take direct action against Jefferson Bank if four full time Negroes are not hired in clerical or teller positions within two weeks." Under date of August 27th, the bank replied in a letter signed by its attorney in which it stated reasons for rejecting the proposal that it hire 4 Negro employees within the time stated in Curtis' letter. Briefly put, these were that it did not need 4 additional employees to do the work it had; that it did not have applications from 4 qualified Negroes seeking such employment; that it was unwilling to discharge other employees to make room for these 4 Negro employees; that to do so would in itself be discrimination, rendering the demands in violation of the Fair Employment Practices Act of the City of St. Louis. The course of events is illustrated by a paragraph in that letter stating: "The bank has now been informed, through the local press, that your organization intends to take 'direct action' against the Jefferson Bank from 4:00 to 6:00 p.m. on Friday, August 30th. This 'direct action' has been described by you to include sit-ins, stand-ins and lie-ins which may interfere with the conduct of the business of the bank during critical hours of its operation." The letter concluded by urging CORE not to hold such demonstrations.

Seeking to avoid what it considered to be the harmful effect of such demonstrations, the bank made a verified application on August 29th

to the circuit court for a temporary restraining order. The style of the proceedings in which all of the orders herein referred to were entered is of some importance. It reads:

> "JEFFERSON BANK AND TRUST COMPANY,
> a corporation,
>
> "-vs- 57945-E
>
> "ROBERT B. CURTIS, WILLIAM L. CLAY, CHARLES R. OLDHAM and MARIAN OLDHAM, LUCIEN RICHARDS, RICHARD DALY, WALTER HAYS, REV. CHARLES PERKINS, NORMAN SEAY, HERMAN THOMPSON, MELVIN WEST, Individually and as representatives of a class known as St. Louis Committee of Racial Equality."

The temporary restraining order was issued and the defendants ordered to show cause on September 26th why a temporary injunction should not be granted. The Sheriff's return shows that on August 30th his office served a copy of this temporary restraining order upon the petitioners Curtis, Clay, Marian Oldham, Richards, Perkins, Seay, and Thompson. The return also recites the service upon 3 other persons not herein petitioners, and that he also delivered copies to "* * * eleven unknown persons (John Doe) located in the vicinity* * *" of the bank.

The temporary restraining order required the defendants to "desist and refrain" from the following acts until the hearing of and ruling upon the order to show cause:

> "(a) Physically hindering, obstructing, interfering with, delaying, molesting or harassing other persons desiring to enter plaintiff's banking premises, from entering said premises for the purpose of conducting their business with plaintiff or for any other purpose.
>
> "(b) Congregating or loitering individually or in groups inside plaintiff's banking premises and therein engage in any acts or conduct of whatsoever character which interferes with, intimidates, harasses, hinders and annoys plaintiff's employees in the performance of their duties or other persons in the conduct of their business with plaintiff or which in any way interferes with the proper and normal conduct of plaintiff's banking business.

"(c) Physically hindering, obstructing, interfering with, intimidating or in any other manner preventing customers or plaintiff and other members of the public from having the usual and customary access to tellers' windows located in plaintiff's banking premises or access to any other department or portion of said banking premises wherein plaintiff conducts its banking business."

The temporary restraining order required a bond in the amount of $10,000.00 and the records of the court show this bond posted and approved. The injunction bond need not herein be set out, but will be specifically referred to later in connection with the petitioners' contentions that it was fatally defective.

We pass now to a consideration of the nine applications consolidated in 31,777. On the 29th of August when the bank filed its verified petition for the temporary restraining order, the court caused the petitioner Charles R. Oldham to be notified. He appeared before the court and, being an attorney, entered his appearance as attorney for the St. Louis Committee of Racial Equality. The court, by agreement with Oldham and the bank's attorney, set a hearing on the restraining order for 10 a.m., August 30th. At that hearing the petitioner, Raymond Howard, an attorney and also a member of the St. Louis Committee of Racial Equality, entered his appearance on behalf of petitioners Charles and Marian Oldham, Curtis, and also on behalf of 3 others not now petitioners.

The verified petition for the citation for contempt recites the application for a restraining order and the entry of appearance by Oldham and that by Howard. It further states that the court had issued a restraining order, the bond had been posted, and Howard advised that the restraining order was in full force and effect by 4 p.m. on August 30th. It then reads as follows:

"7. That at approximately 4 o'clock P.M. August 30, 1963, certain of the defendants appeared at plaintiff's place of business accompanied by more than one hundred persons, including children, and acting in concert and under the direction and supervision of the defendants herein named, sang, paraded, chanted and shouted in and around plaintiff's place of business, locked arms in front of the entrance to plaintiff's place of business, entered in and upon plaintiff's place of business and did then and there walk in, sit in and lie in the lobby of plaintiff's place of business so that the customers of the plaintiff were prevented, hindered and delayed from having access to the tellers' windows at plaintiff's bank and congregated and loitered individually and in groups forcefully and unlawfully inside plaintiff's banking premises, all in violation of the Temporary Restraining Order of this Court entered as aforesaid."

The petition for the citation then alleges that the petitioners were each personally served with a copy of the restraining order or, in the alternative, had notice of that order by having it read to him or her; that these petitioners intentionally violated the restraining order even though they had full and complete knowledge of the order; that acts which were performed by petitioners were accomplished while the petitioners had full knowledge that those acts constituted a violation of the restraining order; and that the petitioners' acts were for the deliberate purpose of "defeating" the restraining order and constituted a "direct, willful and deliberate violation"of that order. The prayer was that a citation for contempt be issued, directing the petitioners Curtis, Clay, Oldham, Mrs. Oldham, Richards, Perkins, Seay, Thompson and Howard to appear on September 3, 1963 and show cause why they "* * * should not be punished for said contempt and why your petitioner should not recover its costs and expenses herein and in its behalf, including attorney's fees to be allowed by this Court, and why the Court should not make such other orders and give such other relief as may be

just and proper in the premises." This citation was issued and the Sheriff's return shows it was executed on the 31st day of August by "* * *attaching and taking into my custody the following persons listed herein, Marian Oldham, and Herman Thompson, Robert Curtis, William L. Clay, Charles Oldham, Lucien Richards, Rev. Charles Perkins, Norman Seay and Raymond Howard * * *."

It appears from the judgment that the hearing set in the circuit court for September 3rd was postponed to September 4th due to a hearing to be held on the 3rd before this court on a petition for habeas corpus filed by the petitioners Seay, Perkins, Richards, Charles Oldham, and Curtis. These petitioners had not given bond as had the other petitioners and were being held in jail pending the hearing of September 3rd. On September 4th, the hearing on the citation was again postponed due to an application for a writ of prohibition filed in this court. That matter being disposed of by the filing of the mandate of this court denying the writ, the causes were passed by consent until September 9th. On the 9th, the hearing was laid over until September 23rd.

On the 11th of September, the circuit court ordered separate notices of the contempt proceedings that had been filed that day and served on each of the petitioners. These notices were not signed by the court and did not state any definite time or place where the petitioners were to appear. However, the court's records show that they were ordered returnable on September 23rd. On September 18th, the court entered an order appointing "* * *Wayne L. Millsap to prepare and file for the approval of the court and service * * *" on the petitioners a notice of contempt proceedings instituted against them

which was to be returnable September 23rd. These notices were prepared and the docket entry on the 23rd shows registered mail receipts from the petitioners and/or their attorneys of record of service of these notices. The Sheriff's return also shows service of the notices of the 18th upon each of the petitioners. The notices of the 18th ordered the petitioners to appear in "Division No. 2, Circuit Court of the City of St. Louis, State of Missouri, Twelfth and Market Streets, St. Louis, Missouri, at 10:00 a.m. on September 23, 1963, and show cause why you should not be punished as for criminal contempt." The notices of the 18th and of the 11th are otherwise identical. Each recites the restraining order and contains the following language: "You are hereby charged with willful disobedience of said Restraining Order, lawfully issued, in the following particulars, and with full knowledge and notice of said Restraining Order." The particulars therein referred to are set forth and are the same in each set of notices. These consist of 4 paragraphs charging that the petitioner named in the notice: (1) conspired to cause others to violate the restraining order; (2) directed, controlled, supervised and planned the demonstration so as to cause the violation of the restraining order; (3) having the right to direct, control, supervise and plan the activities of the St. Louis Committee of Racial Equality; failed to so direct, control, supervise, and plan those activities as to cause the violations of the restraining order to cease; and (4) that the petitioner aided, abetted and counseled others to violate said restraining order by engaging and participating in the violations.

The trial began on September 23rd and continued from day to day until its conclusion on October 3rd. The court took the matter under advisement and indicated it would enter its judgment on the 24th of October.

While the recitals contained in the findings of fact and judgment differ somewhat as to each petitioner, there are certain findings that are common to many of the petitioners and other findings common to all of them. All 9 petitioners were found to have been served with a copy of the restraining order prior to the time when the demonstrators took any steps to stand in front of the bank doors or enter into the bank premises. All of the petitioners except Howard, Richards, and Charles Oldham were found to have been present at a meeting which took place on the parking lot adjacent to the scene of the demonstration where they were informed by the petitioner Howard of the contents of the restraining order and advised by him to comply with that order. The petitioners Marian and Charles Oldham, Curtis, and Richards were also found to have been personally represented by Howard at the hearing on Friday, August 30th, when the restraining order was issued and delivered to Howard at about 1:55 p.m. on that day.

The manner in which these petitioners were found to have willfully disobeyed the restraining order varies somewhat. In this regard, the findings as to Richards, Perkins, Clay, Curtis and Seay are the most extensive. They are identical and read as follows:

> "It is further found that defendant, Rev. Charles Perkins, with full knowledge and notice, as aforesaid, and acting in concert and participation with and aiding and abetting one or more of the persons named as defendants in the aforementioned Jefferson Bank and Trust Company vs. Robert Curtis, et al., did willfully disobey and violate said restraining order by:
>
> "(1) Conspiring with others to violate said Restraining Order by appearing on the 30th day of August, 1963, at the Jefferson Bank and Trust Company, 2600 Washington Avenue, St. Louis, Missouri, with a crowd of more than one hundred persons, including children, and then and there singing, chanting, parading, shouting, and milling about in and around said Bank premises, and causing others to do so; conspiring with others to cause said crowd, or part of them,

to lock arms in front of the entrance to the Bank premises so as to bar entry to and exit from said Bank; conspiring with others to cause said crowd, or part of them, to enter said Bank and sit in, lie in and otherwise obstruct the lobby of said Bank so that customers were prevented, hindered and delayed from having access to tellers' windows and otherwise transacting their lawful business; conspiring with others to cause said crowd of persons, or part of them, to congregate individually and in groups unlawfully inside said Bank.

"(2) So directing, controlling, supervising and planning, while said Restraining Order was in force, as a representative of the St. Louis Committee of Racial Equality with the right to direct, control, supervise and plan the activities of said Committee, as to violate said Restraining Order by causing members of said Committee and others: to sing, parade, chant, mill about and congregate in and around said Bank; to enter said Bank and sit in, lie in, and otherwise obstruct the lobby of the Bank, preventing, hindering and delaying customers from access to tellers' windows and other portions of the premises; to bar entry to and exit from said Bank by locking arms in front of the entrance; and to congregate and loiter individually and in groups unlawfully inside said Bank.

"(3) Failing, while said Restraining Order was in force, as a representative of the Committee aforesaid, with the right to direct, control, supervise and plan the activities of said Committee and its members, and knowing that members of said Committee were violating said Restraining Order, to so direct, control and supervise said activities as to cause said violation to cease and desist.

"(4) Aiding, abetting and counselling others to violate said Restraining Order by engaging and participating in the conduct aforesaid.

"It is further found, adjudged and decreed that the aforesaid acts and conduct constitute offenses against the majesty of the law and the dignity and authority of this Court.

"It is further found, adjudged and decreed that defendant, Rev. Charles Perkins, is guilty of willful disobedience of said Temporary Restraining Order, and is punishable as for criminal contempt."

The petitioner Thompson was not found to have disobeyed the restraining order as stated in paragraph 4 of the findings set out above. The petitioners Charles Oldham, Marian Oldham and Howard were not found to have disobeyed the restraining order as stated in paragraphs 2 and 4.

The fines and sentences imposed by the court vary among the petitioners. Each of the petitioners was assessed one-ninth of the costs. The petitioner Curtis was sentenced to 270 days in jail and assessed a fine of $1,000.00; Mrs. Oldham, Thompson and Howard each received 60 days and a fine of $500.00; Richards received a sentence of 90 days and a fine of $500.00; Charles Oldham, 90 days and a fine of $1,000.00; Perkins was sentenced to 180 days and a fine of $500.00; Clay, 270 days and a fine of $1,000.00; and the petitioner Seay was sentenced to 90 days and a fine of $500.00.

The applications to this court for habeas corpus followed the events summarized above and those later herein summarized relating to those applications consolidated in 31,778 and 31,779. We issued the writs and, in compliance therewith, the respondents brought the petitioners before us. We released the petitioners on bond and set the hearing for the 12th of November, granting counsel leave to file their pleadings and suggestions before that date. The hearing before this court consisted of offering in evidence the exhibits, transcripts and other matters that were before the trial court. These we received subject to the objections that were made during the contempt proceedings in the circuit court. The respondents have objected to the consideration by this court of the transcripts and evidence introduced at the proceedings in the circuit court on the ground of relevancy. Their theory is that this court is bound by the recitals of the judgment entered and cannot look to the facts. Following the hearing, counsel again requested time to file their suggestions and we granted them leave to do so. The last of these was filed in this court on November 26, 1963.

It is necessary to look at the pleadings to determine the issues these proceedings present for our determination. The writs having been issued, the applications for habeas corpus pass out of the cases and the returns to the writs and the traverse thereof form the issues. State ex rel. Burtrum v. Smith, Mo., 206 S.W. 2d 558; Label v. Sullivan et ux., Mo., 165 S.W. 2d 639. In this connection, it should be noted that the answers filed by the 19 petitioners are not in compliance with the provisions of § 532.320, RSMo 1959, V.A.M.S., or of Rule 91.28, V.A.M.R. Both the statute and the rule require the answer to be on the oath of the petitioner. The answer in 31,777 was jointly filed on behalf of the 9 petitioners whose applications for writs of habeas corpus were consolidated therein. The same is true of the 7 petitioners whose applications are consolidated in 31,778, and of the 3 petitioners whose applications are encompassed within 31,779. In each of these 3 joint answers, the verification is by the attorneys for the petitioners. Verification by attorney for the petitioner has been held not to be in compliance with the statute, Gugenhine v. Gerk, Mo., 31 S.W. 2d 1, and to result in the allegations of the return being taken as true. Ex parte Davis, Mo., 62 S.W. 2d 1086. However, the situation in the instant cases is analogous to that in Label v. Sullivan, supra. In that case, petitioner failed to file any pleading traversing the return. Pointing out that it is the law in this state, Ex parte Bass, Mo., 40 S.W. 2d 457, that a habeas corpus matter may be heard on the petition alone if the parties join in so submitting it, the court in Label v. Sullivan, supra, held that respondent therein had waived the petitioner's failure to traverse the return by raising no point about it and by joining issue on the petition, return, and an agreed statement of facts. Certainly the same is true in the instant proceedings.

The respondents have not raised any point regarding the verification of the answer and, in fact, have joined issued upon it by having requested and received our leave to file a joint reply to each joint answer. We hold the respondents have waived any objection to the form of the verification of the answer and have joined issue thereon.

The reply which we granted respondents leave to file is merely a general denial of the allegations of the answer. It follows that, due to the waiver of the deficiencies of the answer as above noted, the issues for our ruling are encompassed within the respondents' returns and petitioners' traverse thereof as found in their joint answers.

The returns filed by the respondents state that the Sheriff took custody of the petitioners pursuant to the commitment orders issued by the circuit court and had transferred custody of the petitioners to the Warden when served with our writs. True copies of the commitment orders were attached to each of the returns filed by the Sheriff. As agreed by counsel, the return filed by the Warden did not include any such orders but reference was made therein to the orders attached to the Sheriff's returns.

The answers present a far more complicated picture. This for the reason that the petitioners evidently assumed that whatever matter was contained within the joint answer filed in one of these three cases applies equally to all the petitioners. Of course, this is not so. The joint answer filed by each of these groups of petitioners applies only to that group. Equally confusing is the fact that when a point is stated in one answer and therein divided into sub-points, some of the sub-points will not appear in

the other answers although they contain the same contention. However, giving the joint answers the liberal reading and construction we think the high purpose of the writ requires, it is possible to determine certain matters which are common to all the answers even though the matter may not be expressed in the same language or expounded at the same length and detail in such answer. These we will deal with in our consideration of the applications consolidated in 31,777. Our rulings thereon will also dispose of those issues with respect to 31,778 and 31,779. These matters are: (1) the application being for civil contempt, the circuit court lacked jurisdiction to try the petitioners for criminal contempt; (2) the petitioners' contentions with regard to the right of this court in a habeas corpus proceeding to go behind the recitals in the judgment and commitment to determine whether there was present a lack of jurisdiction in these cases owing to the facts thereof; (3) the restraining order was void for lack of service and for other reasons to be set out when this point is herein ruled; (4) the contention that the indemnifying bond was defective; (5) defects in the attachment order render it void; (6) that the circuit court lacked jurisdiction due to the existence of a labor dispute within the meaning and interpretation of the Federal statutes relating to labor relations; and (7) the contentions that the punishment adjudged by the circuit court constitutes cruel and unusual punishment within the meaning and prohibition of the I, V, VI, VIII, and XIV Amendments of the Constitution of the United States and of the §§ 8, 9, 10, 18a, and 21 of the Constitution of Missouri, although of what article of that Constitution those sections are from was not given. Presumably petitioners refer to Article I.

In addition to these matters common to all three files the petitioners whose applications are consolidated into 31,777 also advance certain contentions with regard to the necessity for and the propriety of the appointment of the special counsel appointed by the court to assist in the presentation of this case.

It is first necessary to delineate clearly the particular offense with which we are here dealing. The petitioners contend that the circuit court lacked jurisdiction to try them for criminal contempt and to find them guilty of such offense because the application for the contempt citation and the entire conduct of the trial show that these proceedings were, in fact, for civil contempt.

It has been said that contempts logically arrange and divide themselves into four classes: civil and criminal, direct and constructive or indirect. Ex parte Clark, Mo., 106 S.W. 990. A direct contempt is one that occurs in the presence of the court or so near as to interrupt its proceedings. If the judge certifies that he saw or heard the conduct constituting the contempt and that it was committed in the actual presence of the court, a direct contempt may be punished summarily. It is so provided by rule in this state (Rule 35.01, a, V.A.M.R.) and was the law prior to the adoption of that rule, Ex parte Clark, supra; and see cases collected Mo. Digest, Contempt, Key 6. Constructive or indirect contempt arises from matters not transpiring in court but which go to degrade or make impotent the authority of the court or to impede or embarrass the administration of justice. State ex inf Crow v. Shepherd, 177 Mo. 205, 76 S.W. 79;

Holt v. McLaughlin, Mo., 210 S.W. 2d 1006;Ex parte Clark, supra; and see cases cited Mo. Digest, Contempt, Key 2. The procedure in cases of constructive or indirect criminal contempt which may not be punished summarily is set forth in Rule 35.01, b, V.A.M.R.

The line of demarcation between criminal contempts and those that are civil in nature is indistinct and confusing. 17 C.J.S. Contempt, Sec. 5(2); 12 Am. Jur. Contempt, Sec. 6. For all practical purposes Rule 35.01,(b), V.A.M.R., governing criminal contempt actions in this state is the same as Rule 42(b), 18 U.S.C.A., dealing with the same matter in the federal practice. It has repeatedly been held that in actions for criminal contempt brought under the federal rule technical pleadings are not required. Bullock v. United States, 265 F. 2d 683. A strict compliance with the rule is not necessary. United States v. United Mine Workers of America, 330 U.S. 258, l.c. 295-301. The same result was reached in Osborne v. Purdome, Mo., 244 S.W. 2d, l.c. 1012 where it is said that there is no fixed formulae for contempt proceedings which are sui generis and do not require technical accuracy. Criminal contempt embraces acts committed against the majesty of the law and that the primary purpose of punishment for criminal contempt is the vindication of public authority. Ex parte Clark, supra; see also Mo. Digest, Contempt, Key 3 - Criminal Contempt, Key 4 - Civil Contempt.

The petitioners rely upon the language of the application or motion for attachment which they contend illustrates this proceeding to be for civil contempt. There are at least two answers to such an argument. The first is that there are contempts in which both elements appear, civil and criminal. State v. Bland, Mo., 88 S.W. 28. In

Limerick v. Riback, Mo. App., 224 S.W. 45 at l.c. 46, criminal contempt was held applicable to acts in violation of an injunction. The court held:

> "* * * It is true that civil contempt proceedings are for the purpose of protecting the property rights of private parties, or for the benefit of the opposing party in a civil action, but it is equally well established that there may be in a civil case to protect private property rights a contempt in a punitive sense to vindicate the supremacy of the law and to punish for a completed act of disobedience."

That is true in the instant case for there can be no doubt that the Jefferson Bank and Trust suffered pecuniary loss as a result of these demonstrations at the same time the dignity and authority of the circuit court and the majesty of the law were likewise suffering.

It should be noted that the application charges a "willful and deliberate" violation of the restraining order and that the prayer of the application requests the court to order the petitioners to show cause why they "* * * should not be punished for said contempt and why your petitioner should not recover its cost and expenses herein* * *" (emphasis supplied). In United States v. United Mine Workers, supra, the petitioner for contempt charged a "willful and deliberate" violation of the restraining order and prayed that the contemnors be "punished." The court then stated that the use of the word "punished" could well be held adequate notice of a proceeding for criminal contempt, referring to Moskovitz, Contempt of Injunction, Civil and Criminal, 43 Col. L. Rev. 780, and also held that the use of the term "wilfully and deliberately" indicates an intention to proceed as for criminal contempt. The petitioners are incorrect in their contention that the application for the contempt citation illustrates the civil character of this proceeding. In cases 31,778 and 31,779, the motions instituting those proceedings do not contain any requests for civil relief.

The second answer to such a contention is that the language used in the application or petition can hardly be said to be determinative of the essential character of the proceeding. Once the application or motion is ruled on, it passes out of the case. The essential question is whether the petitioners had notice of and understood they were to be tried for criminal contempt. There can be no doubt of that matter in the instant case. The notice of September 11th and that of the 18th, served upon each of the petitioners, clearly called upon them to "show cause why you should not be punished as for criminal contempt." These notices also contained the statement that the petitioners' actions constituted "offenses against the majesty of the law and the dignity and authority of this court." Moreover, these notices were read aloud in open court to each petitioner. This and the other requirements of Rule 35.01, supra, were strictly complied with. No one can read this transcript and come to any conclusion other than these petitioners and their counsel clearly understood the nature of this proceeding to be for criminal contempt.

The petitioners rely upon Gompers v. Buck's Stove and Range Co., 221 U.S. 418. No comment is necessary as to the vitality of that decision in view of the United Mine Workers decision for the case does not support the petitioners' contentions. In Gompers the court held that one of the more important tests to determine criminal as distinguished from civil contempt was the character and purpose of the punishment. Gompers v. Buck's Stove and Range Co., 221 U.S. at 441. It was cited for this ruling in the United States v. United Mine Workers, 330 U.S. at 297. In Carder v. Carder, Mo. App., 61 S.W. 2d 389, the court distinguishes criminal and civil contempt by quoting with approval from the Gompers case as follows:

> "'"* * * The order for imprisonment in this class of cases, therefore, is not to vindicate the authority

of the law, but is remedial and is intended to coerce the defendant to do the thing required by the order for the benefit of the complainant. If imprisoned, as aptly said in Re Nevitt [C.C.A.] 117 F. 451, 'He carries the keys of his prison in his own pocket.' He can end the sentence and discharge himself at any moment by doing what he had previously refused to do.

"'"On the other hand, if the defendant does that which he has been commanded not to do, the disobedience is a thing accomplished. Imprisonment cannot undo or remedy what has been done nor afford any compensation for the pecuniary injury caused by the disobedience. If the sentence is limited to imprisonment for a definite period, the defendant is furnished no key, and he cannot shorten the term by promising not to repeat the offense. Such imprisonment operates, not as a remedy coercive in its nature, but solely as punishment for the completed act of disobedience."'"

The petitioners did that which they had been commanded not to do. Their acts were not threatened; their disobedience was a thing already accomplished. The imprisonment and fines to which they were sentenced was in no way coercive but was intended to and did operate solely to vindicate the majesty of the law and punishment for the petitioners' completed acts of willful and deliberate disobedience. The petitioners had notice that they were to show cause why they should not be punished as for criminal contempt and were warned in the notice served upon them and read to them in open court that the offenses with which they were charged constituted offenses against the majesty of the law and the dignity and authority of the court. It follows that what is here involved are acts of criminal contempt.

The petitioners' next contention is that in a habeas corpus proceeding testing the legality of the restraint arising from a conviction for criminal contempt, this court has authority to go behind the recitals in the findings and examine the evidence. They further contend that, upon doing so, we will find the evidence

will not support the recitals. Based upon their allegations in this regard, the petitioners urge that the trial court did not have jurisdiction to render the particular judgments it entered. The respondents' position is that this court is conclusively bound by the recitals in the judgment and that in this proceeding we cannot inquire beyond whether the committing court had jurisdiction over the subject matter and over the persons of the petitioners. The respondents also contend that this court is forbidden to look behind the recitals in the judgment by the provisions of Rule 91.35, V.A.M.R.

Ex parte Clark, supra, involved what was specifically held to be a constructive or indirect criminal contempt. After reciting the rule that there was no appeal in such cases, the court held (106 S.W. 990, l.c. 997):

> "* * * no appeal lies and no writ of error may go. State ex rel. v. Bland, supra. Absent such remedy, what was said in that case (page 207 of 189 Mo., page 30 of 88 S.W.) is applicable here, to wit, that where no statutory right of appeal exists or writ of error lies courts having superintending control have been astute and diligent in granting relief by inspecting records under writs of certiorari or habeas corpus. Ex parte O'Brien, supra; State v. Leftwich, 41 Minn. 42, 42 N.W. 598; In re Watts & Sachs, 190 U.S. 1, 23 Sup.Ct. 719, 47 L.Ed. 933."

It is with respect to the extent of our inspection of the records of the proceedings before the circuit court that this court must necessarily concern itself.

The Supreme Court of this state in the case of Ex parte Creasy, 243 Mo. 679, 148 S.W. 914, specifically held that in a habeas corpus proceeding arising out of an indirect criminal contempt proceeding, it had authority to go behind the recitals in the judgment and to make

the inquiries and determinations the petitioners would have this court make. Its ruling and a portion of the rationale therefor are to be found in the following excerpt from the opinion (148 S.W. 914, l.c. 916 [1]):

> "[1] 'I. First, I do not agree that the judgment of the court nisi in contempt proceedings is conclusive in this court upon the facts, when issues as to the facts are made upon the hearing of the writ of habeas corpus. The writ of habeas corpus has a peculiar constitutional sanctity, which this court will not permit to be frittered away by any judicial ascertainment of the facts, except the ascertainment made by the court trying the case under this peculiar writ of right. Our constitutional provision as to writ of habeas corpus has a deep-seated meaning. It was lodged there for the sole purpose of affording one deprived of liberty the right to have the cause of his detention investigated, and, too, whether such detention was upon the judgment of a court, or was upon some other alleged authority. To say that the committing court in contempt proceedings can absolutely conclude an investigation of the facts by the tribunal hearing the writ of habeas corpus is giving the judge whose court has been the target of an alleged contempt more power than our Constitution ever contemplated. If such be the law, the only thing left for the court hearing the writ of habeas corpus is to determine whether the judgment and writ of commitment are regular upon their face. If they are, then the prisoner must be remanded, it matters not how flagrantly the offended judge may have disregarded the facts. Judgments in contempt proceedings are in a measure different from other judgments. They are judgments entered by one not altogether disinterested. They may not be cool, dispassionate judgments, but may be shaded by the feelings of one presiding over a court thought to have been outraged by the conduct of a person in attendance upon such court. Human liberty is too sacred under our Constitution to say that under a judgment emanating from such a source the actual facts are not for review in the court trying the writ of habeas corpus. Mere jurisdiction of the person and the subject-matter is not and should not be the test of a valid judgment in a contempt proceeding. This is the test in ordinary judgments, but out of respect for constitutional provision with reference to the writ of habeas corpus many courts have gone further, and, as to contempt judgments, have said that, in order to sustain the

> contempt judgment, it must not only be shown that the court had jurisdiction of the person, and of the subject-matter - i.e., contempt - but that it must be shown that under both the law and the facts the particular judgment could be sustained. A learned discussion of this exact point is found from the pen of Davidson, P. J., of the Texas Court of Criminal Appeals, in the case of Ex parte Duncan, 42 Tex. Cr. R. 661, 62 S.W. 758.'" (Emphasis ours.)

It will serve no useful purpose to herein set out the lengthy quotation from the Texas case cited. It appears in the Creasy opinion and can be read there or in the original version. It should suffice to say that opinion contains an extensive and comprehensive review of the law on the point from various states of the union. It is well worth reading not only for the cases cited, but for the soundness of its reasoning. For the latter purpose, the following quotation from the Creasy case is of such importance that its length must be overlooked (148 S.W. 914, l.c. 920):

> "[2] 'We are firmly of opinion that, as to contempt judgments, such judgments can be attacked in habeas corpus for (1) want of jurisdiction over the person; (2) want of jurisdiction over subject-matter; and (3) want of jurisdiction in the particular case owing to the facts thereof, although the first two requisites are fully met. In other words, as said by the Texas court "nor can the court make contempt of that which is not contempt; and every attempt to do so would be in excess of authority or jurisdiction, as much so as if the court had no authority or power to punish for contempt, either in relation to the person or subject-matter. There must be contempt in order to justify punishment for that offense." Proof that there was in fact no contempt should avoid the judgment. We are aware that there are generalizations in the books, which appear opposed to this dictrine, but, if we are to give full vitality to the constitutional writ of habeas corpus, such should be the law. If not, the hearings upon writs of habeas corpus become mere perfunctory proceedings in which we determine a mere paper case; i.e.: (1) Has the court jurisdiction of the person and subject-matter, and (2) has the court (whether truly or falsely) recited facts enough to constitute

> contempt? Such a hearing would be far from the hearing so forcefully put by our Brother Lamm, in Clark's Case, supra, when he said: "Wherefore, when the great writ goes down - a writ whose origin is beyond the dawn of English history, whose final and triumphant establishment was a landmark in the evolution of civil liberty, making the hearts of lovers leap for joy - to the prisoner the doors of jails open, he comes into court with his shackles dropped, and <u>the cause of his imprisonment, the very marrow of it, is laid bare to the utmost verge and minutiæ permitted by written law</u>." The italics are ours. Prison doors are but temporarily opened, if under this great and benign writ we are bound by the mere ipsi dixit of a judge finding for us the facts: The leaping of hearts for joy would only last long enough for the prosecutor to read a false finding of fact in contempt wherein there was no contempt. There the "very marrow" of the cause of the imprisonment might be fully shadowed by a perverse finding of facts, which would prevent its being "laid bare."'"

Seizing upon the language in the excerpt above set out regarding a contempt judgment as being one entered by a person not altogether disinterested and the possibility that such a judgment may be shaded by the outraged feelings of the judge in whose court the contempt occurred, the respondents contend such language constitutes the real basis for the decision. In support of that argument, the respondents cite Ex parte Howell, Mo., 200 S.W. 65, a case decided 6 years after the Creasy decision. We cannot agree. In the first place, such an argument totally ignores the real rationale for the Creasy case as stated in the excerpts set out herein. While we regret the length of those excerpts, we have nevertheless included them so that it might be clearly understood that the language respondents contend furnishes the basis for that opinion is but a crutch to the sound leg upon which that decision stands. In the second place, Howell and Creasy involved different classes of criminal contempt. In Creasy, the recitation was that the contempt took place in the court's presence. However, when this recital came before the court in the subsequent habeas corpus proceeding, the Supreme Court specifically held that the contempt involved was indirect or constructive, stating:

> "'In this case the commitment recited that the contempt occurred in the presence of the court, when, as a matter of fact,as shown by proof aliunde in controversion of the terms of the commitment, that the alleged acts were not in the presence of the court.* * *'"

Accordingly, the Creasy case is not one involving direct contempt but was, in fact, a case of indirect criminal contempt as are the cases here involved, while the Howell case was, in fact, a case of direct contempt. Since the Howell case involved a type of contempt not involved in the instant case, the pertinence of that case to our inquiry can only be that by the opinion in the Howell case handed down some 6 years later, the Supreme Court of this state extended the rule announced in the Creasy to cases involving direct contempts. The Howell case in no way affects the force and effect of the Creasy decision upon the conclusiveness of the recitals in the judgment in a case of indirect contempt.

However, even if the Howell and Creasy cases were not so distinguishable, we could find no merit in respondents' contention. A careful reading of the Howell opinion affords convincing proof that the rationale of that case is not the makeweight argument that the court is allowed to go behind the recitals of the judgment to avoid the unfairness that may arise from judicial passion and prejudice. The true basis for the Howell opinion is to be found in that portion of the opinion preceding the court's remarksupon which the respondents rely. There the court said (200 S.W. 65, l.c.68):

> "Absent the right of appeal, no opportunity for a full review of the proceedings is afforded, except by habeas corpus. Resort to the writ of certiorari, sometimes employed in other jurisdictions, will not afford relief because, as is not infrequently the case, the proceedings concurrent with and provocative of the judgment for contempt, are not preserved in

> the record, and hence cannot be brought up for review. By invoking the aid of habeas corpus, however, which is always construed in favor of the liberty of the citizen, an opportunity is afforded, in a case of the character here under consideration, to look beyond the commitment and its recitals which the court below acted, and determine therefrom, although jurisdiction of the person and subject-matter be conceded, whether the court had authority to render the judgment, or generally whether the third essential to the court's right of action existed.* * *"

The rationale for the Howell decision is clearly the same as that for the Creasy decision.

However compelling Creasy may be, our decision that we are not bound by the recitals in the judgment does not rest solely upon that decision. In Osborne v. Purdome, Mo., 250 S.W. 2d 159, (see also Osborne v. Purdome, Mo., 244 S.W. 2d 1005), the contempt did not take place in the presence of the court. Having been found guilty of contempt, Osborne brought his application for habeas corpus before the Supreme Court of this state sitting en banc. In the habeas corpus proceeding, the petitioner raised the contention that the evidence was insufficient. The Supreme Court reviewed the evidence and determined for itself the sufficiency thereof. Its action in that regard constituted a clear sub silentio ruling that it had authority in a habeas corpus proceeding to make such an inquiry and determination and was not bound by the recitals in the judgment.

In addition to the direct rulings of the point found in Creasy, supra, and in Osborne, supra, there have been numerous recognitions that such was indeed the law. See Holt v. McLaughlin, supra, l.c. 1007 [4,5], where the court, in speaking of all criminal contempt cases, stated "* * * a full review of such proceedings is afforded by habeas

corpus.* * *" In the Howell opinion, supra, l.c. 69, the court refers to Ex parte Clark, supra, as "impliedly" endorsing this principle. As stated earlier herein, Clark involved a case specifically held to present indirect contempt. See also Threlkel v. Miles, Mo. en banc, 10 S.W. 2d 953, l.c. 956 [7], and Ex parte Devoy, Mo. App., 236 S.W. 1070, l.c. 1072 [1], [2], where this court held:

> "In Ex parte Creasy, 243 Mo. 679, 148 S.W. 914, our Supreme Court established the proposition that the judgment of the circuit court committing a person for contempt is not conclusive upon the facts, but that such facts may be inquired into in the court of which the writ of habeas corpus issues."

Compare Ex parte Cloud, Mo. App., 18 S.W. 2d 562, l.c. 563.

This court's decision to go behind the recitals of the judgment finds support in logic and sound reasoning as well as in the case law referred to in the preceding portion of this opinion. For example, to rule otherwise would render useless the clearly stated requirements of § 476.140, RSMo 1959, V.A.M.S., and of Rule 35.01, b, V.A.M.R. The statute requires that where a person shall be committed for contempt "* * *the particular circumstances of his offense shall be set forth in the order or warrant of commitment." The rule requires that "Upon a finding of guilt the court shall enter an order reciting the essential facts constituting the criminal contempt and fixing the punishment." The appellate courts of this state have repeatedly held that the facts and circumstances constituting the offense, and not simply the legal conclusions of the court, must be recited not only in the judgment but also in the commitment regardless of whether the contempt arose out of conduct or action before the court or outside of its presence. Glenn v. Hendrix, Mo. App., 349 S.W. 2d 532, l.c. [2,3]. If as respondents contend, there is no possibility of going behind

the recitals of those orders, then there would be no reason for the statute and rule to so carefully require them to include the facts and circumstances of the contempt rather than the legal conclusions the committing judge draws therefrom. Neither would there be any purpose in the explicit enforcement of that requirement by the appellate courts of this state. Glenn v. Hendrix, supra. To the contrary, if respondents be correct, it would seem that the conclusions of the committing judge would be clearly sufficient. They are not and this helps persuade us that our decision is soundly reasoned.

Another example of such persuasive matters is one mentioned in the Creasy case. It is that § 532.320, RSMo 1959, V.A.M.S., seems to encompass controversy as to issues of fact. That section is the same as § 2468, R.S. 1909, in force when the Creasy opinion was handed down, and reads:

> "The party brought before any court or magistrate, by virtue of any writ of habeas corpus, may deny the material facts set forth in the return, or allege any fact to show, either that his detention or imprisonment is unlawful, or that he is entitled to his discharge; which allegations or denials shall be on oath."

This language is substantially the same as that of Rule 91.28, V.A.M.R. In the Creasy opinion (148 S.W. 914, l.c. 920), the court relied upon the provisions of this section, stating: "* * * Furthermore, our statute (section 2468, R.S. 1909) seems to contemplate the practice for which we contend* * *" and pointed out that the petitioner in that case did so plead. So it is in the instant cases. The petitioners' pleadings in this case constitute complete denials of the material facts alleged in the return and, moreover, allege other facts by which petitioners contend their detention is unlawful and they are entitled to be discharged.

Still another example of persuasive argument why this court should not be bound by the recitals of the judgment was given in Creasy and is equally of force in the instant case. In that opinion the court said (148 S.W. 914, l.c. 920):

> "'If former adjudication in another habeas corpus proceeding will not estop a subsequent inquiry as to facts surrounding the detention of a citizen, why should it be said that the findings of fact made by the presiding judge of the court against which the offense of contempt was committed would forever seal the lips of a petitioning citizen from showing the facts surrounding the judgment committing him? If the high character of the writ under the Constitution is such as to preclude the doctrine of res adjudicata, so long as the petitioner is in custody, why should not the same rule apply to facts surrounding and entering into the particular judgment?'"

also

The respondents/contend that by Rule 91.35, supra, the Supreme Court has imposed a limitation on the courts of this state preventing inquiry into the recitals in the judgment. Rule 91.35, supra, is identical to § 532.440, RSMo 1959, V.A.M.S. It is the same as § 2475, RSMo 1909 (in force when the Howell case was ruled), and § 5379, RSMo 1889 (in force when Creasy was decided). In the Howell case, it was held that the legislative branch of our government lacks the power to prescribe by statute limitations upon the judicial review of an adjudication of guilt in a criminal contempt proceeding. The respondents admit that this is true of a legislative attempt such as those embodied in § 532.440, supra, and in the previous enactments of that section in force when Howell and Creasy were ruled. However, they urge that Rule 91.35, supra, being a limitation by the judicial branch of government upon its own power, is not subject to the same attack and does, in fact, constitute a valid and enforceable

limitation upon the judicial review of adjudication of guilt in criminal contempt proceedings. Again, there are several reasons why respondents' contention cannot be adopted by this court:

The first is that when it adopted Rule 91.35, supra, the Supreme Court of this state must be held to have done so with the previous judicial interpretations of the language contained therein clearly in mind. As heretofore stated, the rule and the legislative enactments are identical. This language had been held in both Howell and Creasy not to prevent a judicial inquiry into the validity of the recitals in the judgment. By the use of that same language in the rule, the Supreme Court must have intended the same construction to be placed upon it and cannot be held to have intended to place limitations upon the judicial review of criminal contempt proceedings which it had previously found unwarranted, unconstitutional and unenforceable.

Another answer is that the rule making power of the Supreme Court of this state is limited to procedural matters. There can be no doubt but that, if given the interpretation the respondents seek to have us place upon it, this rule would affect substantive matters and thus be beyond the authority of the Supreme Court to promulgate. In spite of the fact that it must be held to have been cognizant of the limitation of its rule-making power, the effect of respondents' argument would be to hold the Supreme Court intended to make a rule affecting substantive matters and thus violative of that limitation upon its authority. We must refuse to make such an unwarranted and illogical assumption.

Finally, we think it well to keep clearly in mind the precise legal point upon which we are ruling. This decision does not change, alter or modify the field of inquiry in every habeas corpus proceeding. It is elementary that this decision must be read in the light of the circumstances of the cases we are ruling, i.e., cases involving indirect criminal contempts. We are in no way extending that rule to any other adjudication or imprisonment from which relief may be sought by habeas corpus. However, as the Howell case makes clear, the rule is the same in cases involving direct criminal contempt. The effect of our decision is that in habeas corpus proceedings brought by one found guilty of indirect criminal contempt, the court to which the application for the writ is made may go behind the recitals of the judgment and determine for itself the accuracy of those recitals and their sufficiency to support the judgment rendered. Ex parte Creasy, supra; Osborne v. Purdome, supra. The reason it is permissible to do so in cases of this nature and why such latitude is not granted to the court considering an application for habeas corpus where the adjudication and imprisonment arises out of matters other than criminal contempt is clear and soundly reasoned. It is that in cases other than criminal contempt, the right of appeal is available. The very matters which the rule we have herein restated allows this court to go into can be reviewed in such cases without the necessity of resorting to habeas corpus. After having the benefit of such a review or having failed to seek such review, the inquiry, upon application for habeas corpus is properly limited to whether the court had jurisdiction over the person and over the subject matter. Lacking that opportunity to secure review in habeas corpus

proceedings where the adjudication and imprisonment results from an act of criminal contempt, the inquiry of the court before which the application for habeas corpus is pending is extended to include a third matter; i.e., want of jurisdiction in the particular case owing to the facts thereof, although the first two inquiries be satisfied. Ex parte Creasy, supra; Osborne v. Purdome, supra. The distinction between the scope of inquiry in habeas corpus proceedings arising out of criminal contempt cases and those that arise out of other matters is dealt with in Sisk v. Wilkinson, 265 S.W. 536, l.c. 538 [5]. Having due regard for the historic character and high purpose of the writ of habeas corpus and keeping firmly in mind the regard our system of law bears toward individual liberty, we can reach no other decision in matters of this nature. As it has been so aptly put (Ex parte Creasy, supra, l.c. 923) "The Constitution guards the liberty of the felon with the same eagle eye that it does the infant and pure girl."

As was stated earlier herein, this court admitted into evidence at the habeas corpus hearing before it the transcripts, exhibits and all other matters that were presented to the trial court. These we took subject to the objections made in the trial court. It would unduly extend the length of this opinion if we were to recite and pass upon each of the objections made during the course of these 3 trials. It is a gross understatement to say these objections were very numerous and the arguments advanced to support each of them were extensive. It suffices to state that in determining the factual situation shown by these transcripts and records, we have accepted the evidence properly admitted and have disregarded that which was properly objected to. We

will state only that evidence bearing upon the recitals contained in the judgment entered as to each petitioner.

As to the first nine petitioners, whose applications are consolidated into 31,777, the facts show that the St. Louis Committee of Racial Equality had regular Sunday meetings. At such a meeting held on August 25, 1963, "direct action" at the Jefferson Bank and Trust Company was discussed with various types of direct action considered. It was formally voted that direct action would be taken against the bank and the actual planning for the demonstration would be done at a special meeting called for Thursday evening, August 29th. How the individual petitioners voted is not shown. At the meeting on August 29th, the petitioner Oldham advised them of the application for a restraining order filed in the circuit court. According to the witness Daly, Oldham explained what an injunction was and that for violation of it, "You could be arrested. That you could be fined or jailed." Mr. Oldham also informed them that the hearing on the motion was to be held on Friday morning, and secured a signed authorization from three of the petitioners (Mr. and Mrs. Oldham and Curtis) for the petitioner Howard to represent them. All the petitioners were present at this meeting with the exception of Howard. After Oldham had told them of the application for the injunction, had explained the possible penalties for violation of the restraining order, and had recommended that if such an order be issued, it be obeyed, a motion was made and carried that a demonstration be held at the bank and that "Several persons were to link arms and stand in front of the doorway of the

bank." The motion also included going inside the bank. At this same meeting, a plan was made whereby "* * * any persons who were willing to be arrested, not knowing the outcome, but willing to do this to block the front door of the bank." By formal action of those present, Curtis was placed in complete charge of the tactics and strategy of the demonstration and Thompson and Richards were designated as captains and placed in charge of the picket lines.

On August 30th, the demonstrators met at the Wheatley YWCA. Under the direction of Curtis, they formed lines, marched to the bank, and began peaceful picketing which continued until about 5:05 or 5:10 p.m. At some time prior to or during this peaceful picketing, a sound movie was taken at the scene. A portion of this movie consists of an interview between a reporter and the petitioner Curtis. In the course of that interview the following question was asked and answer given:

> "'MR. CONDON: Mr. Curtis, do you expect to honor the bank's injunction with this demonstration?
>
> "'MR. CURTIS: Well, we haven't anything to say at all on this issue. We feel that sometimes, while there is an injunction, it is necessary to take extraordinary measures to remedy an extreme situation and I hope, of course, it won't be necessary to violate any Court injunction or even violate the law. But there are times when this becomes necessary and, of course, we hope this will not be necessary today.'"

At approximately 5:05 or 5:10 p.m. a meeting was held on a parking lot adjacent to the scene of the demonstration. This meeting is of importance for the undisputed testimony is that prior to the holding of this meeting the demonstrators made no effort to block the doors of the bank nor to enter the bank. There had been a previous announcement that such a meeting would take place. One witness

testified she was told of such a meeting during the picketing by the petitioner Richards who advised her attendance. Others stated they learned of such a meeting by "the grapevine" or in other ways they could not specifically describe. All the petitioners except Messrs. Oldham and Richards attended this meeting. The petitioner Curtis presided at this meeting and upon introducing Howard told those gathered on the parking lot to listen to him. All the witnesses who testified as to this matter were unanimous that the petitioner Howard advised the group that a restraining order had been issued and urged them not to block the doors or otherwise violate the injunction as to do so would subject them to possible fine and/or imprisonment. Curtis then called for a show of hands of those present who were willing to block the doors of the bank, thereby subjecting themselves to possible arrest. All present raised their hands except Howard. The gathering then dispersed, and some of the demonstrators in attendance went immediately to the front doors of the bank where they blocked the entrance by linking arms and standing in the doorway or standing so close together in the doorway no one could enter or by sitting in front of the doorway.

The testimony is clear that there were people who tried to get into the bank to transact business and could not get past the line of demonstrators. It is also clear that those who did enter the bank had extreme difficulty in doing so and that those who were inside the bank when the entrances were blocked had the same experience when they attempted to leave. There is no testimony that any one of these 9 petitioners linked arms, sat or stood in front of any of the doorways nor that any of them used their persons to physically block the entrances to the bank.

At about 5:25 or 5:30 p.m. the demonstrators first entered the bank itself. They marched around inside the bank; they congregated in front of the tellers' cages; they sang and clapped hands in unison; some sat on the floor and some lay down on the floor. While they were inside the bank, Mr. McConnell, an officer of the bank, read to them a copy of the restraining order and repeatedly asked them to leave the bank. The demonstrators stopped singing and clapping while McConnell read the restraining order to them, but after he asked them to leave the bank, started to sing and clap again. None of the demonstrators left the bank. At approximately 5:50 p.m. the petitioner Curtis came inside the bank, asked for the demonstrators' attention and upon getting their attention and securing quiet, announced that, "We will stay here until six o'clock and then we will go to the Wheatley YWCA."

When the demonstrators left the bank at about 6:00 p.m., a large number went to the Wheatley "Y" where Curtis and a Mr. Williams from East St. Louis complimented them on their courage, and Curtis announced a meeting of CORE for that Sunday evening.

All the petitioners with the exception of Thompson admitted they were served with a copy of the restraining order prior to the time the meeting was held on the parking lot. There was other evidence that all, including Thompson, were so served.

It will be helpful to consider the activities of each of these 9 petitioners. The petitioner Curtis was chairman of the St. Louis Committee of Racial Equality at the time of this demonstration. He presided at the regular meeting of that organization held on the 25th of August when "direct action" was voted against the bank.

He also presided at the strategy meeting of the 29th of August, when it was voted to block the doors of the bank, to go into the bank, and for some of the demonstrators to be arrested. At this meeting the petitioner Oldham got Curtis to give Howard a "signed authorization" to represent him as an individual at the hearing on the issuance of the restraining order. Curtis was formally placed in charge of the entire demonstration, and the evidence of the witness Seay shows clearly that the other petitioners so understood. Curtis admitted this when he was asked, "Now, this entire operation was under your direction, was it not?" and answered, "Yes, it was." At the predemonstration meeting at the Wheatley "Y" Curtis gave instructions to the pickets, and during the demonstration he directed them. His interview with the reporter regarding, as he put it, times when violation of the law becomes necessary, has already been stated. This petitioner presided at the meeting on the parking lot and called for a show of hands to ascertain if there were any present who would subject themselves to possible arrest by blocking the doors of the bank. The evidence is that he held up his hand. At 5:50 p.m. the petitioner Curtis entered the bank and told the demonstrators to leave at 6:00 p.m. and also told them to reassemble at the Wheatley "Y". The demonstrators obeyed his instructions, and at the "Y" Curtis announced a meeting of CORE for that Sunday evening. The petitioner Curtis was asked if he was aware, before it ever occurred, that a sit-in or lie-in at the bank was a violation of the restraining order and answered, "Oh, yes, I was aware of that."

The evidence does not show the petitioner Clay to have been present at the meeting of the 25th, but he was present at the strategy meeting of the 29th of August. He was at the predemonstration meeting at the Wheatley "Y". He was present at the parking lot meeting where he also raised his hand when asked if there were any present who would subject themselves to possible arrest by blocking the doors of the bank. This petitioner stood on the corner of the sidewalk leading to the doors of the bank and motioned a group of pickets into the bank.

Mrs. Oldham was present at the meeting of the 25th and at the meeting of the 29th. At the latter meeting she authorized Howard to appear for her at the hearing on the issuance of the temporary restraining order. She was present also at the predemonstration meeting at the Wheatley "Y" and at the parking lot meeting where she raised her hand when the question was put regarding blocking the doors.

The petitioner Thompson is a former head of the St. Louis Committee of Racial Equality and was present at the meeting of the 29th when the motions to block the doors of the bank and to go inside it were carried. At this meeting he was made a captain in the demonstration and placed in charge of one of the picket lines. He was present at the meeting on the parking lot and raised his hand when Curtis asked for a show of hands on the issue of blocking the doors of the bank. He testified that he was aware that blocking the doors of the bank would interfere with its business.

Mr. Seay was present at both meetings held prior to this demonstration. He attended the meeting on the parking lot and was one

of those who raised their hands when Curtis posed the question as to who would be willing to block the doors. He did go inside the bank but there is no evidence he joined in any of the activities there. It appears that he went into the bank and got 2 children who were participating in the demonstration and brought them outside. At one time, noticing that people were getting into the bank by going in back of the line at the door, this petitioner directed those in the line to back up so that the entrance would be more effectively blocked. Those in the line blocking the door obeyed his instructions.

The petitioner Richards, immediate past chairman of CORE, was present at the meeting of August 25th and also present at the meeting of the 29th. At the latter meeting he was appointed a "captain" in the demonstration and was in charge of one of the picket lines at the bank. He was also present at the predemonstration meeting at the Wheatley "Y". Richards was not present at the meeting on the parking lot, but he directed a demonstrator to attend the meeting. When the demonstrators were in the bank, Richards was with them and participated in the singing and generally milled around inside the bank. He did not sit on the floor or block the doors of the bank. Some of the demonstrators had entered the bank still carrying the signs they had carried while on the picket line outside, and Richards directed them to take the signs outside and then come back.

The Rev. Mr. Perkins was present at the meeting held on the 25th of August and also at the meeting held on the 29th. He was not shown to have been present at the predemonstration meeting at the Wheatley "Y". He was present at the meeting on the parking lot and there raised his hand in response to the call by Curtis for a

show of hands as to who would be willing to block the doors of the bank. This petitioner came inside the bank with the first of the demonstrators to do so and complained loudly about "police brutality" or "sheriff brutality." He milled around inside the bank and, using his arms, directed the singing, but did not sing nor clap hands nor sit on the floor of the bank.

The petitioner Charles Oldham was national chairman of CORE for a period of 5 or 6 years. He was present at the meeting of the 25th of August. He had entered his appearance as attorney of record for the St. Louis Committee of the Congress of Racial Equality on Thursday, August 29th. He went to the meeting of the 29th to advise the group that a petition for an injunction had been filed and explained what an injunction was and the possible penalties for violation of the injunction. He obtained authorization from four of those at the meeting for Howard to represent them as individuals. He also told the meeting that a hearing would be held on the request for a restraining order on Friday morning, and the uncontradicted evidence is that he advised those present against violating the injunction if it was issued. Mr. Oldham was not present at the predemonstration meeting at the Wheatley "Y" nor at the meeting on the parking lot. He never went into the bank nor did he participate in blocking the doors. There is no evidence that he gave any directions to anyone at the scene or acted in any manner that would cause them to violate the restraining order.

The petitioner Howard was present at the meeting held on August 25th but was not present at the meeting held on the 29th of that month. He had entered his appearance in the proceedings

concerning the restraining order as attorney of record for both the Oldhams, for Curtis, and for some others not here petitioners. He was engaged in that proceeding on August 30th, and when it was over went to the scene of the demonstration. Howard spoke to the meeting held on the parking lot and told the group of the issuance of the restraining order and that they would violate it should they block the door, sit or lie in the bank, sing or do anything that would interfere with the business of the bank. The evidence is unanimous and uncontradicted that this petitioner spoke strongly against any violation of the restraining order. He went inside the bank on two occasions. The first was when he first learned the demonstrators were in the bank. He then went into the bank to make certain that no one he represented was in the bank. This was prior to the reading of the restraining order to all the demonstrators in the bank by Mr. McConnell, an officer of the bank. On this occasion he had a conversation with the bank's attorney and with Mr. McConnell. During this conversation he told them that the demonstrations might continue unless an agreement was reached on the bank employing Negroes. The second occasion was when he returned with Curtis at 5:50 p.m., and Curtis made his announcement about the demonstrators leaving at 6:00 p.m. Howard left the bank immediately after his conversation with Mr. McConnell and immediately after the announcement by Curtis. There is no testimony that this petitioner directed anyone at the scene of this demonstration or that he acted in any manner that would cause others to violate the restraining order.

It is readily apparent from the evidence stated above that there was ample evidence to substantiate the court's finding that

the petitioners had been served with a copy of the restraining order prior to the time the demonstrators blocked the doors and entered the bank. It is equally apparent there is ample evidence to support the circuit court's finding that, together with many others not here petitioners, all of the petitioners except Howard, Richards, and Charles Oldham were present at the parking lot meeting. Actually the evidence is clear that Howard was present also and that petitioner so admitted. The same is true as to the finding that Howard there informed them of the issuance of the restraining order (they had already been served with a copy of that order) and advised them against any violation of that order. The evidence is that Howard specifically explained that to block the doors, enter the bank and sit or lie in the bank, to sing or otherwise interfere with the business of the bank was a violation of the restraining order. The petitioners Richards, Marian and Charles Oldham, and Curtis, were found to have been represented by Howard at the hearing on Friday morning, August 30, concerning the issuance of the restraining order. There is no question but that both of the Oldhams and the petitioner Curtis authorized Howard to appear for them. There is no evidence that Richards did so. The court's records do not so show and neither was there any testimony to that effect. However, we do not find this unsubstantiated finding to be of importance since the evidence is clear that Richards was personally served with a copy of the restraining order prior to his entry into the bank and prior to the time when any of the demonstrators first blocked the doors of the bank or entered the bank.

We pass now to a consideration of the specifications of the activities of these 9 petitioners which the circuit court found to

constitute violations of the restraining order. Proceeding logically, it would seem that the degree of proof required to sustain the finding made would depend upon whether the contempt proceeding is regarded as criminal in nature. If so, then the guilt of the accused would require the same quantum of proof as in a criminal proceeding, i.e., beyond a reasonable doubt. Those jurisdictions in which contempt proceedings are regarded as quasi-criminal in nature require a standard of proof greater than a mere preponderance of the evidence but less than beyond a reasonable doubt. 12 Am. Jur., Contempt, Sec. 75. We are spared the difficulties attendant upon putting into words a degree of proof that would be between those poles. In Missouri, although we deny that such proceedings are criminal in nature, Osborne v. Purdome, Mo., 244 S.W. 2d l.c. [8, 9] p. 1012, we require that guilt be proved beyond a reasonable doubt. Osborne v. Purdome, Mo., 250 S.W. 2d l.c. [11] p. 163.

Considering the burden of proof required and, having due regard for the extent of this court's review of the evidence as held earlier herein, this court's duty is to consider the evidence summarized above as to each petitioner. The question is whether that evidence supports the finding, beyond a reasonable doubt, that the petitioner acted as stated in the specifications found as to him or her. In so doing it is unnecessary to consider all the specifications found as to that petitioner. The purpose of the writ is to test the legality of the restraint. It follows that if the determination stated above is supported as to even one of the several specifications contained in the judgment entered as to a petitioner, then that petitioner is not illegally restrained and, as to that individual,

our writ should be quashed. On the other hand, if not even one of the several specifications found as to a petitioner is sustained, beyond a reasonable doubt, by the evidence then that petitioner must be discharged.

The second specification of the findings of fact and judgment entered as to these nine petitioners finds that they directed, controlled, supervised and planned this demonstration, while the restraining order was in force, so as to cause members of their organization and others to violate the restraining order by barring entry to and exit from the bank and by causing others to enter the bank. By the fourth specification these petitioners were found to have aided, abetted and counseled others to engage in the described activities violating the restraining order. There can be no doubt that such activities are punishable for contempt. This is the rule in Missouri. Osborne v. Purdome, Mo., 244 S.W.2d l.c. (23) p. 1015. See also 12 Am. Jur., Contempt, Sec. 7, p. 10, 11, 12 and 13; 17 C.J.S., Contempt, Sec. 33; 43 C.J.S., Injunctions, Sec. 263, a, c.

That portion of the second specification finding that these acts were caused by these petitioners while the restraining order was in force is fully supported by the evidence. The restraining order was issued at approximately 2:00 P.M., and none of the acts which these petitioners were found to have caused occurred until after 5:00 P.M., and after these petitioners not only had been served but had knowledge of the existence of the order through information given them by the petitioner Howard at the parking lot meeting.

The evidence clearly supports the finding that the petitioners Curtis, Clay, Seay, Perkins, and Richards are guilty beyond a reasonable

doubt of criminal contempt under the 2nd and 4th specifications of the findings of fact and judgment entered as to those petitioners. The entry by the petitioner Curtis into the bank at 5:50 P.M. and his announcement therein concerning the meeting at the Wheatley "Y" at 6:00 P.M., was, in effect, a clear act of counseling, abetting and directing the demonstrators in the bank to continue their activities in violation of the restraining order for another 10 minutes. This in spite of this petitioners own admission that he understood those activities were in violation of that order. Moreover, Curtis admitted that he had control of the whole demonstration and the evidence is clear that the other demonstrators so understood and looked to him for direction and control. With respect to the petitioner Clay the evidence is that after the parking lot meeting, he stood on the sidewalk leading to the bank and directed a group of demonstrators into the bank. The petitioner Seay went into the bank and brought outside two children who were participating in the demonstration. He actively directed the demonstrators blocking the door to move back further against the door so that their unlawful activity could be made more effective. The petitioner Perkins directed the demonstrators as they sang inside the bank, he walked around in the bank with them, and he led the complaints against what he termed "police brutality" or "sheriff brutality." These are activities that clearly show his direction, control, supervision and planning was such as to cause others to violate the restraining order and to aid, abet and counsel them to do so. The activities of the petitioner Richards inside the bank as he joined the demonstrators as they sang and "milled about" is proof of his aiding, abetting, and counselling others to violate the restraining order by

engaging in such activity. His activity in directing certain of the demonstrators who had entered the bank carrying signs to take the signs outside the bank and then return goes to the same issue as it does to prove this petitioner's direction, control, supervision, and planning were such as to cause others to violate the restraining order.

The evidence does not sustain the finding that the petitioners Thompson, Howard, Marian Oldham and Charles Oldham were guilty, beyond a reasonable doubt, of any of the specifications found against them.

All of these petitioners were found guilty of the first specification in that they conspired to violate the restraining order by appearing with a crowd of more than one hundred persons and, "* * * then and there singing, chanting, parading, shouting and milling about in and around said bank premises.* * *" The general rule is that a person can be guilty of contempt for conspiring to cause or bring about a contemptuous action is stated in 17 C.J.S., Contempt, Sec. 33. This rule is recognized in Missouri. Osborne v. Purdome, Mo., 244 S.W.2d 1005 (23); Middleton v. Tozer, Mo. App., 259 S.W.2d l.c. 86. For an example of the same ruling from another jurisdiction, see Berlandi v. Commonwealth, Mass., 50 N.E.2d 210. But certainly no one could be held to be guilty, beyond a reasonable doubt, of a conspiracy because they "appeared" with a crowd of over one hundred persons. Yet that is the most the evidence shows as to these petitioners. These petitioners neither sang nor chanted, nor shouted at any place. Only Thompson can be held to have done any parading and that was done in a manner not forbidden by the restraining order. The balance of the first specification consists of findings that these petitioners conspired

to cause this crowd or part of it to do acts forbidden by the restraining order. There are only two of these findings supported by any evidence at all. First is the finding that these petitioners conspired with others to cause this crowd, or part of it, to lock arms in front of the entrances so as to bar entry to and exit from the bank. The second is that they conspired to cause the crowd or part of it to go into the bank. The evidence is clearly deficient as to these findings. This is true even if we disregard the fact that the meeting of August 29th took place prior to the issuance of the restraining order and consider the action at that meeting where it was voted to block the doors and enter the bank. The petitioner Howard was not present at that meeting, and the uncontradicted evidence is that Mr. Oldham there recommended obedience to the restraining order. There is no showing that he later voted for the resolution to block the doors or in any way changed his recommendation nor acted in any manner to show his joining any conspiracy. The petitioners Thompson and Mrs. Oldham were present at the meeting of the 29th, but there was no evidence as to how they voted on the resolution. It is urged that attendance at the parking lot meeting and holding up their hands in response to Curtis' inquiry as to who would be willing to block the doors constitutes proof of these findings. However, there is no evidence that the matter forming the basis of the second finding, entering the bank, was discussed at the parking lot meeting. Charles Oldham was not present at the parking lot meeting. The petitioner Howard did not raise his hand, and the evidence is that he spoke earnestly against violating the restraining order. The only proof of these findings

is as to the petitioners Thompson and Marian Oldham. This consists of proof they were present at the parking lot meeting and held up their hands. Such activity falls short of proving, beyond a reasonable doubt, these petitioners conspired to cause others to violate the restraining order.

The petitioner Thompson is the only one of these four petitioners to have been found guilty of the second specification. There is no evidence to sustain such a finding. The evidence as to the petitioner Thompson is that he was a captain and in charge of a picket line. There is no showing that those in the picket line violated the restraining order under Thompson's control, direction, supervision, and planning.

Each of these four petitioners were found to be guilty of the third specification. This specification alleges that, while the restraining order was in force, and having the right to direct, control, supervise and plan the activities of the St. Louis Committee of Racial Equality and its members, and knowing some of the members of that organization were violating the restraining order, these four petitioners failed "* * * to so direct, control, and supervise said activities as to cause said violation to cease and desist." We have grave doubts whether this specification complies with the clearly stated requirements of Sec. 476.140, supra., and of Rule 35.01, supra., stated earlier herein. See Glenn v. Hendrix, supra, where it was held that the essential facts and circumstances constituting the offense and not the legal conclusions of the court must be recited in the judgment. We need not and do not rule the point, however, for even if we were

to hold this specification obeys the statute and rule, there is no proof to substantiate such a finding.

Since none of these petitioners were found to have been guilty of the fourth specification, we need not discuss it. It follows that the petitioners Thompson, Howard, Marian Oldham, and Charles Oldham are illegally restrained and should be discharged forthwith.

The petitioners complain of the appointment of Wayne L. Millsap and John Montrey, plaintiffs' attorneys, as special prosecutors in the contempt proceedings. It is alleged that by said appointments petitioners were deprived of their rights to due process and equal protection of the laws as guaranteed by the Sixth, Eighth, and Fourteenth Amendments to the Constitution of the United States, the Constitution of the State of Missouri, Art. 1, Sec. 10 and the statutes of the State of Missouri, particularly Sec. 56.110, RSMO. 1959. In support of this allegation these petitioners contend that the aforementioned Wayne L. Millsap had a personal, pecuniary, special and inconsistent interest in the outcome of the matter, and, therefore, petitioners were deprived of a fair and impartial trial; that Wayne L. Millsap's dual role in the case was inconsistent in that he served as attorney for the plaintiff, filed the petition for injunctive relief, secured the restraining order for the sole benefit of the bank, filed the application for citation for contempt seeking court costs, expenses and attorneys' fees, and that he was the son-in-law of Dillon Ross, President of Jefferson Bank and Trust Company. It was further alleged that said Wayne L. Millsap attempted to intimidate and coerce a sixteen

year old witness, a member of the class sought to be prosecuted and promised her immunity, thus depriving petitioners of their constitutional rights to a fair and impartial trial, due process and equal protection of the laws under the Constitution of the United States. The answer of petitioners in cause No. 31,779 contained like averments with the exception of the last two above mentioned allegations.

At the hearing there was no evidence to support this last above mentioned charge or evidence of the relationship between Millsap and Dillon Ross, President of Jefferson Bank and Trust Company. All that appears from the record is that Wayne L. Millsap appeared throughout the proceedings before Judge Scott as the attorney for the bank, which also employed John Montrey. There was no evidence whatever of improper conduct on the part of either Mr. Millsap or Mr. Montrey. Both are respected members of the Bar of this State, and by reason thereof officers of the court bound to represent the court when called upon to do so. Under such appointment they are considered as representing the State and not their private clients.

Under the New Jersey law it is expressly provided that in a criminal contempt case, the court may, in its discretion, appoint the attorney who represents the complaining party, unless it senses that unfairness may ensue. Department of Health v. Roselle, 34 N. J. 331, 169 A. 2d 153; Whippany Paperboard Co., Inc. v. Local No. 301 United Paperworkers of America, C.I.O., et al., 93 A. 2d 349. And in McCann v. New York Stock Exchange et al. (C.C.2d Cir.) Judge Learned Hand has this to say on the subject:

> "* * *the Court may proceed sua sponte without assistance of any attorney, as in the case of disorder in the courtroom; there can be little

> doubt about the kind of proceeding when this is done. But the judge may prefer to use the attorney of a party, who will indeed ordinarily be his only means of information when the contempt is not in his presence. There is no reason why he should not do so, and every reason why he should; * * *."

In Osborne v. Purdome, Mo., 250 S.W.2d l.c. (1,2) p. 160, this point was ruled. The court thus stated:

> "In State ex rel. Gentry v. Becker, 351 Mo. 769, 174 S.W.2d 181, 184, we held that a court could make such an appointment, saying: 'The court has the inherent power to punish for contempt and if it has also the inherent power to appoint or request a lawyer, as an officer of the court, to represent it or the state in the prosecution of the contempt proceeding, that is all the power the court reasonably needs for its own protection and for the due administration of justice.' * * *"

In the case at bar there are no allegations of fact in Respondents' answers to the return tending to show that the trial court abused its discretion in the appointment of Mr. Millsap and Mr. Montrey as special prosecutors, or that their constitutional rights were denied thereby, nor was there any evidence introduced at the hearing which tended to show any impropriety in the appointments. Sec. 56.110 RSMo 1959 is not applicable. That section of the statutes relates to criminal proceedings and provides that the court may appoint an attorney to replace the prosecuting attorney or his assistant where either is interested in the case being prosecuted or defended by reason of having been employed as counsel and such employment is inconsistent with the duties of his office, or where either shall be related to the defendant. The point urged has no merit.

These nine petitioners next contend the restraining order was void for two reasons. First, because the order served was not the order received by the sheriff and certified by the clerk. The second contention

is that the restraining order served failed to recite approval of the bond. The petitioners have failed to cite any authority for either contention nor do they, in their brief, refer to any facts to support these contentions. An examination of the record shows that the restraining orders served were copies of and identical to the order entered by the court. In their joint answer petitioners state, "There are two alleged restraining orders in the Court's file." and incorporate by reference exhibits P3 and P4 which are the "Petition for Injunction" and the "Restraining Order." Their contentions with regard to the failure of the restraining order to recite the approval of the bond evidently arises from their confusion in regarding both of these documents as restraining orders. The "Restraining Order" issued on August 30th contains the following:

> "Thereupon, comes the plaintiff by attorney, and presents to the Court its Injunction bond, conditioned accourding (sic) to law in the penal sum of Ten Thousand Dollars ($10,000.00), with Hanover Insurance Company as surety, and the Court having seen and examined the same, doth order that said bond be approved and filed, which is now accordingly done."

In their brief the petitioners seek to enlarge upon the matters contained in their answer and raise the contention that the restraining order is void because its provisions are "* * * vague, too broad, too indefinite and are unenforceable." As has been held herein, the issues are circumscribed by the return and the answer thereto. However, a reading of the restraining order will illustrate the fallacy of such an argument. That order is very definite in its terms, clearly proscribes certain specified acts and activities and is sufficient to give notice to anyone reading it what acts are forbidden. There is no merit to petitioners' contention the restraining order is void.

Petitioners in their returns attack the validity of the restraining order on the grounds that the indemnity bond was void in the following respects: (1) because it failed to indemnify all parties named in the restraining order, (2) because (as to the Howard in 31,777, all seven petitioners in 31,778 and the three petitioners in 31,779), the petitioners were not named in the bond nor did the bond name a class to which they belonged, (3) the bond was not approved or signed by the judge, and (4) alterations were made on its face which rendered it ambiguous. These contentions will be considered in turn.

In the absence of any elaboration in petitioners' law memorandum it is difficult to understand the basis for the first contention. In its petition for an injunction the bank named as defendants Curtis, Clay, Charles Oldham, Marian Oldham, Richards, Cahill, Daly, Hays, Perkins, Seay, Thompson, and West, individually and as members of a class known as St. Louis Committee of Racial Equality. Cahill was immediately dismissed as a defendant with the result his name does not appear in the caption of the certified copy of the record regarding the granting of the restraining order, and it was crossed out in one place in the bond. The court's record named as defendants Curtis, Clay, Charles Oldham, Marian Oldham, Richards, Daly, Hays, Perkins, Seay, Thompson, and West. In the first paragraph of the bond the bank as principal, and Hanover Insurance Company as surety, bound itself to all of the original defendants, including Cahill. In the second paragraph all of the original defendants were named, but Cahill's name is crossed out. Since Cahill was not named in the restraining order, the inclusion of his name in the first

paragraph of the bond is an obvious oversight, and should be regarded as a superfluity. Barrett v. Stoddard County, Mo. App., 183 S.W. 644; Rubelman Hardware Co. v. Greve, 18 Mo. App. 6. There is no merit to this contention.

The next contention is that the bond is void because the seven petitioners named in 31,778 and the three petitioners named in 31,779, were not named in the bond, nor was a class to which they belonged named. The execution of a bond as a prerequisite to the obtaining of a restraining order is governed by Civil Rule 92.09, which reads:

> "No injunction or restraining order, unless on final hearing or judgment, shall issue in any case, except in suits instituted by the state in its own behalf, until the plaintiff, or some responsible person for him, shall have executed a bond with sufficient surety or sureties to the other party, in such sum as the court or judge shall deem sufficient to secure the amount or other matter to be enjoined, and all damages that may be occasioned by such injunction or restraining order to the parties enjoined, or to any party interested in the subject matter of the controversy, conditioned that the plaintiff will abide by the decision which shall be made thereon, and pay all sums of money, damages and costs that shall be adjudged against him if the injunction or restraining order shall be dissolved."

This rule is the same as Section 526.070, RSMo 1949, V.A.M.S., except that restraining orders are expressly included.

Preliminarily, it may be stated that the requirement that a bond be posted before a restraining order or temporary injunction is issued is jurisdictional, and one issued without a bond is void. State ex rel Becker v. Westhues, Mo., 286 S.W. 882; Gounis, Ex parte, 304 Mo. 428, 263 S.W. 988.

The first part of petitioners' contention may be readily disposed of. These petitioners were charged with violating the restraining order some time after it had been issued. Obviously the bank

could not be expected to know, and to name in its petition at the time it was filed, the names of all those who might subsequently violate the restraining order. The power of clairvoyance is not common, if it exists at all.

The second part presents a more difficult problem. The defendants named in the bank's petition were sued as individuals and "as representatives of a class known as St. Louis Committee of Racial Equality." The caption of the restraining order similarly named them in their individual and in their representative capacity. However, in the bond, both in the first and second paragraphs, they are referred to only as individuals. Petitioner Howard in the first case, and all of the petitioners in the second and third cases, claim that the bond is void because (A) the named defendants were not described therein as the representatives of the class; and (B) because the bond did not indemnify "any party interested in the subject matter of the controversy," the phrase used in Civil Rule 92.09.

It is true that in the body of the bond the named defendants were not described as the representatives of the class. But the caption referred to them as "Curtis, et al, etc." This is a common and ordinary way of referring to the caption of the petition, and that, of course, described the named defendants as the representatives of the class. Furthermore, in the second paragraph of the bond it is recited that a temporary injunction had been issued against the named defendants "as by the record of said Court will fully appear." The court's record (the petition, and the order granting the restraining order) all make it clear that the named defendants were sued both as individuals and as representatives of the class.

In Franz v. Buder, 34 F. 2d 353, 355, the Circuit Court of Appeals for the Eighth Circuit said that, "considerable liberality is exercised in construing designations of obligees in bonds, so long as the intent of the parties is clear." This court, in Stine v. Southwest Bank of St. Louis, Mo. App., 108 S.W. 2d 633, held that the omission to properly designate a person as obligee on a bond would not render the bond void where the identity of the individual could be gathered from the whole instrument. In fact, a close reading of that case will disclose that the court went beyond the bond itself, and examined the entire record to determine the correct name of the obligee. To the same effect see General Motors Acceptance Corp. v. Hutto, 136 S.C. 207, 134 S.E. 232, where the Corporation, which held a judgment against Hutto, was permitted to recover on a bond in which it was not named as obligee, but which referred to the judgment held by the Corporation. In the light of these authorities it would seem that the failure to expressly describe the named defendants in the bond as representatives of the class was a mere "mistake or clerical error" (Stine v. Southwest Bank, supra, p. 635) which would not render the bond void.

The petitioners rely heavily on the case of Dillon, Ex parte, Mo. App., 96 S.W. 2d 1095. In that case the Springfield Court of Appeals interpreted the statute to require the bond to run not only to the parties named in the litigation, but also to persons interested in the subject matter of the action. A careful analysis of the present Rule discloses that it only requires that the bond be executed "to the other party." The reference therein to other persons interested in the subject matter is confined solely to the

determination by the court of the amount of the bond, in order that it may be sufficient to indemnify other persons, not parties, who may be interested. Thus the Rule states that the plaintiff shall execute a bond: "* * * in such sum as the court or judge shall deem sufficient to secure the amount or other matter to be enjoined, and all damages that may be occasioned by such injunction or restraining order to the parties enjoined, or to any party interested in the subject matter of the controversy."

If the interpretation of the Springfield Court of Appeals is correct, it would mean that in every case where the possibility exists that other persons might subsequently join with the named defendants in willfully violating a restraining order, it would be necessary to write into the bond a provision that it was executed in favor of any person interested in the subject matter of the controversy. It would also mean that without such a provision in the bond the transgressor, although he willfully violated the order, could not be punished by contempt. However, in Dillon, the court held that Mr. and Mrs. Dillon, though not served with a copy of the order, had actual knowledge of the order and that when they thereafter violated it, they were guilty of contempt.

This court need not rule upon this apparent conflict, for even if the Rule makes it mandatory for the plaintiff to execute the bond in favor of any interested party, as well as the named defendants, there is another rule of law which is applicable. There are innumerable cases which hold that where a bond is given in pursuance of a statute, courts in enforcing the bond will read into it the terms of the statute which have been omitted, and will read out of

it terms included which are not authorized or required by the statute. People, to Use of Wilson v. Mosley, Mo., 263 S.W. 2d 340 (a forthcoming bond given by an interpleader); State ex rel Jefferson County v. Sheible, Mo., 163 S.W. 2d 559 (a bond given by a county treasurer); State v. Vienup, 347 Mo. 382, 147 S.W. 2d 627 (a bond given by a licensee under the Liquor Control Act); State v. Wipke, 345 Mo. 283, 133 S.W. 2d 354 (same kind of bond); State v. Ruebling, Mo., 133 S.W. 2d 360 (same); Fogarty v. Davis, 305 Mo. 288, 264 S.W. 879 (contractor's bond given school board); Zellars v. National Surety Co., 210 Mo. 86, 108 S.W. 548 (appeal bond); State ex rel Sanders v. Hartford Acc. & Ind. Co., 235 Mo. App. 729, 143 S.W. 2d 483 (security dealers bond); Rubelman Hardware Co. v. Greve, 18 Mo. App. 6 (injunction bond). Hence, if it was a mandatory requirement of the statute that the bond run to interested parties, the court may read into the bond that provision of the statute.

The petitioners then contend the bond is void because it was not approved or signed by the judge. The basis for this claim of invalidity is that the court wrote "8/30/63 Approved Michael J. Scott, Judge" on the power of attorney attached to the bond, rather than on the bond itself. No cases are cited in petitioners' memorandum in support of this contention, and careful research has failed to disclose any bearing directly on the question. However, there is no merit to the point. First, because Rule 92.09 does not require that the court approve the bond. Nor does Rule 92.10, which provides only that, "* * * the bond may be entered into before said clerk, if the court or judge granting the order or injunction shall first approve the security." (Emphasis supplied.)

There is a second answer to petitioners' contention. The court's record recites that the plaintiff presented the bond to the court, and that the court approved it. It has long been the rule in this state that a court speaks only through its records, which import verity, and cannot be impeached by extraneous evidence. In re Wakefield, 365 Mo. 415, 283 S.W. 2d 467; Flansburg v. Kaiser, Mo., 184 S.W. 2d 1004. Hence the record showing the court's approval of the bond is conclusive.

The last reason whereby the petitioners contend the bond is void is that alterations were made on its face which render it ambiguous. The only alteration made in the bond was that in the second paragraph where Cahill's name was crossed out, although it was allowed to remain in the first paragraph. Petitioners do not explain in their law memorandum why this alteration would render the bond null and void, nor can we conceive of any reason why this would be so.

Where two or more obligees are named in the bond, each has a separate right to recover thereon in the event of a breach. Helmkampf v. Wood, 85 Mo. App. 227. While it is the better practice for all obligees named in the bond to join in a motion for the assessment of damages, an obligee who has not been injured or damaged need not join. Barrett v. Stoddard County, 272 Mo. 129, 197 S.W. 914. It follows that even if the bond may be said to be ambiguous as to Cahill, such ambiguity would not affect the rights of the other petitioners named therein. Since Cahill was not restrained, he could have no right to join in a motion for an assessment of damages. It is, of course, apparent that the failure to strike Cahill's name

from the first paragraph was a mere oversight, and as stated earlier, the inclusion of his name may be treated as a superfluity. The petitioners' contentions with regard to the bond are without merit.

The petitioners' contentions with regard to the attachment are summarized in their contention that they were not sufficiently informed thereby of the specific charges placed against them. They contend that this lack of sufficient information constitutes a violation of due process of law as guaranteed by the 14th Amendment of the Constitution of the United States and also as guaranteed to them by Article I, Section 10, 18(a), 19 and 21 of the Constitution of the State of Missouri. Sections 18(a) and 19 have to do with criminal proceedings and are not applicable to a proceeding for criminal contempt. Osborne v. Purdome, supra. Article I, Sec. 21, has to do with cruel and unusual punishment and will be discussed along with the other arguments advanced by petitioners with regard to their contentions that the sentences and fines imposed constitute cruel and unusual punishment. Article I, Section 10 of the Constitution of Missouri is what is generally known as the "due process law clause" of the Constitution and corresponds to the due process of law clause of the 14th Amendment of the Constitution of the United States. There is no merit to petitioners' contentions.

It is axiomatic that due process of law is not satisfied unless the party proceeded against is apprized of what is happening and is given an opportunity to defend (In Re Barger, Mo. App., 365 S.W. 2d 89). In a contempt case the alleged contemnor is entitled to a notice which fairly and fully informs him of the specific acts of

contempt with which he is charged, and this notice must be given so as to afford a reasonable time to make his defense. G. v. Souder, Mo. App., 305 S.W. 2d 883. The petitioners' contentions with regard to whether the time given them to prepare their defense was reasonable will be dealt with in connection with those petitioners whose applications are consolidated into cases 31,778 and 31,779 for the reason that there is no contention in this regard in the joint answer filed in 31,777. However, in all these cases it is alleged that the first element of due process, sufficient notice, is missing.

With reference to the petitioners whose applications were consolidated in 31,777, the application for the attachment set out in detail the activities of the petitioners which it was contended constituted willful and deliberate violations of the restraining order. These are the same charges as contained in the specifications found against these petitioners. As stated earlier herein that application prayed that the petitioners show cause why they should not be punished for said contempt. This application was granted, and an attachment order issued which called for the petitioners to be brought before the court on September 3. On the morning of that day counsel for all the petitioners were served with a copy of that application. At the request of the petitioners and to allow them to file their applications for writ of habeas corpus and prohibition in this court, the hearings were postponed until September 9th. Certain preliminary matters such as interrogatories and depositions not having been disposed of at that time the matter was passed, with consent of all parties, to September 23rd. On the 11th of September and again on the 18th of that month the petitioners were served

with notice to show cause why they should not be punished "as for criminal contempt." The notice recited the restraining order in full and charged the petitioners with willful disobedience of that order in the manner set out in the specifications. On the 23rd this notice was read to the petitioners in open court whereupon they plead not guilty and announced ready for trial.

With regard to the petitioners whose applications are consolidated into our files 31,778 and 31,779, the proceedings were begun by the filing of a motion. See Rule 92.15, V.A.M.R., Sec. 526.220, RSMo., 1959. That motion set out in great particular the specific acts by which it was contended the petitioners there involved had violated the restraining order. Those acts are the same as contained in the specifications of the judgment entered as to each of these petitioners. The petitioners were each served with a copy of the attachment order which, as to those petitioners in 31,779, contains the specific charge that they were violating the restraining order by "physically hindering or interfering with persons desiring to enter or leave Jefferson Bank and Trust Company, standing, lying and sitting in said bank and thus interfering with normal conduct of said banking business, and standing and milling inside said banking premises and hindering and interfering with access by the public to plaintiff's banking facilities." As to those petitioners in 31,778, the attachment order served contains the specific charge that they were violating the restraining order by "standing in, lying in, sitting in, singing in, or walking in* * *" the bank. The petitioners were brought before the court, and counsel appearing for the petitioners in 31,777 entered their appearance. As provided by

Rule 35.01(b), supra, the notice was given orally by the judge in open court reading the written notice to these petitioners. In each case after hearing evidence from witnesses who identified each of the petitioners and described conduct by each of them which would constitute a violation of the restraining order, the court entered an order to show cause setting out in detail the acts of the petitioner alleged to have been in violation of the restraining order, fixed a time and date for hearing, and admitted the petitioners to bail. Rule 35.01(b), supra.

In all three of the cases the petitioners have attacked the jurisdiction of the Circuit Court to issue the restraining order on the grounds that a "labor dispute" exists. Their contentions are that: (1) A labor dispute existed within the meaning and interpretations of the Federal statutes relating to labor relations; (2) By such statutes the Federal Government has preempted the field of labor relations and deprived the State courts of jurisdiction in such matters; (3) The evidence has not shown these cases to come within any of the exceptions to this rule which would permit the State court to exercise jurisdiction. These matters will be discussed in the order named.

Presumably the petitioners claim that a labor dispute arose, within the meaning of the Federal statutes, because of CORE's demand on the Jefferson Bank that it employ four Negroes as clerks or tellers, and the Bank's refusal to accede to its demand. The only Federal statute cited by the petitioners in their law memorandum is the Norris-La Guardia Act, 29 U.S.C.A. 101. Section 101 of that Act provides:

> "No court of the United States, as defined in this chapter, shall have jurisdiction to issue

> any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this chapter; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this chapter." (Emphasis supplied.)

The term "labor dispute" is defined in Section 113(c) as follows:

> "(c) The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee."

In New Negro Alliance v. Sanitary Grocery Co., 303 U.S. 552, 58 S.Ct. 703, 82 L.Ed. 1012 (1938), cited by petitioners, a corporation composed of colored persons, organized for the mutual improvement of its members and the promotion of civic, educational, benevolent, and charitable enterprises, demanded that the grocery chain employ colored persons in managerial and sales positions in a newly-opened store. Sanitary Grocery refused, the Alliance picketed the store, and upon the petition of Sanitary Grocery the District Court of the District of Columbia enjoined the picketing. Pointing to sub-paragraph (c) of Section 113, as well as to sub-paragraph (a) which defines a case involving or growing out of a labor dispute, the Supreme Court said (303 U.S. 561):

> "The Act does not concern itself with the background or the motives of the dispute. The desire for fair and equitable conditions of employment on the part of persons of any race, color, or persuasion, and the removal of discriminations against them by reason of their race or religious beliefs is quite as important to those concerned as fairness and equity in terms and conditions of employment can be to trade or craft unions or any form of labor

organization or association. Race discrimination by an employer may reasonably be deemed more unfair and less excusable than discrimination against workers on the ground of union affiliation. There is no justification in the apparent purposes or the express terms of the Act for limiting its definition of labor disputes and cases arising therefrom by excluding those which arise with respect to discrimination in terms and conditions of employment based upon differences of race or color."

Regarding the purpose of the Act, the court held (303 U.S. 562, 563):

"The legislative history of the Act demonstrates that it was the purpose of the Congress further to extend the prohibitions of the Clayton Act respecting the exercise of jurisdiction by federal courts and to obviate the results of the judicial construction of that Act. It was intended that peaceful and orderly dissemination of information by those defined as persons interested in a labor dispute concerning 'terms and conditions of employment' in an industry or a plant or a place of business should be lawful; that, short of fraud, breach of the peace, violence, or conduct otherwise unlawful, those having a direct or indirect interest in such terms and conditions of employment should be at liberty to advertise and disseminate facts and information with respect to terms and conditions of employment, and peacefully to persuade others to concur in their views respecting an employer's practices. The District Court erred in not complying with the provisions of the Act.

"The decree must be reversed and the cause remanded to the District Court for further proceedings in conformity with this opinion."

Of course, as the underlined portion of Section 101 indicates, the prohibition against the issuance of restraining orders or injunctions in a case involving or growing out of a labor dispute applies only to a "court of the United States"; and does not limit the jurisdiction of state courts. In McCarroll v. Los Angeles County Dist. Coun. of Carpenters, 49 Cal. 2d 45, 315 P. 2d 322, 332 (1957), the Supreme Court of California states:

"The Norris-LaGuardia Act is in terms drawn as a limitation on the courts of the United States.

'No court of the United States,' declares section 1, 'shall have jurisdiction to issue any * * * injunction in a case involving or growing out of a labor dispute * * *,' and a court of the United States is defined in section 13(d) as 'any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia.' 29 U.S.C.A., Sec. 101, 113(d). The statute aimed to restrict the federal equity power, and was justified constitutionally on the basis of Congress' power to regulate the jurisdiction of the federal courts. Brotherhood of R.R. Trainmen v. Toledo, Peoria & Western R.R., 321 U.S. 50, 58, 63, 64 S.Ct. 413, 88 L.Ed. 534; Lauf v. E.G. Shinner & Co., 303 U.S. 323, 330, 58 S.Ct. 578, 82 L.Ed. 872. It did not limit the remedial power of the state courts (see United Elec., Radio & Mach. Workers v. Westinghouse Elec. Corp., D.C. E.D. Pa., 65 F. Supp. 420, 422; General Bldg. Contractors' Ass'n v. Local Unions, 370 Pa. 73, 87 A. 2d 250, 254, 32 A.L.R. 2d 822; Markham & Callow, Inc., v. International Woodworkers, 170 Or. 517, 135 P. 2d 727, 746, citing Frankfurter and Greene, The Labor Injunction at 220; 39 Ops. U.S. Atty. Gen. 242, 246), and could not constitutionally have done so since its prohibition was not restricted to injunctions in labor disputes affecting interstate commerce or any other subject over which Congress has paramount power."

Certiorari was denied, 355 U.S. 932, 78 S.Ct. 413, 2 L.Ed. 2d 415.

Furthermore, the Norris-LaGuardia Act does not prohibit even the Federal courts from issuing injunctions in <u>all</u> cases involving or growing out of a labor dispute. The jurisdiction of the Federal courts to continue to issue restraining orders and injunctions in cases where "* * * unlawful acts have been threatened and will be committed unless restrained, or have been committed and will be continued, unless restrained * * *" is recognized by Section 107 of the Act. Thus it has been held that the Norris-LaGuardia Act does not prevent a Federal court from restraining acts of violence. Brotherhood of Railroad Trainmen, Local Lodge No. 721 v. Central of Georgia Ry. Co., (4 C.A., 1956), 229 F. 2d 901; Cater Const. Co. v. Nischwitz, (7 C.A., 1940), 111 F. 2d 971; Grace Co. v. Williams, (8 C.A., 1938), 96 F. 2d 478.

While the petitioners have not referred to it in their memorandum, there is another Federal measure which merits consideration, the Labor Management Relations Act, 29 U.S.C.A. 141. In brief, that Act creates a Board and a General Counsel, Sec. 153; declares certain acts of an employer, and of a labor organization, to be unfair labor practices, Sec. 158; establishes procedures for the determination of an appropriate bargaining unit and the selection and certification of a collective bargaining representative, Sec. 159; and empowers the Board to prevent and enjoin the commission of unfair labor practices, Sec. 160. By Section 152(9) the term "labor dispute" is defined as follows:

> "(9) The term 'labor dispute' includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee."

It will be noted that this definition of the term "labor dispute" is almost identical to that contained in the Norris-LaGuardia Act.

Other than the definition of the term "labor dispute," there is nothing in the Act which would support the claim that CORE's demand on the bank, and the latter's refusal to accede thereto, was an unfair labor practice, or otherwise constituted a violation of the Act. No case has been cited by petitioners, and none has been found, involving under the Labor Management Relations Act a factual situation similar to that in New Negro Alliance v. Sanitary Grocery, supra. However, in view of the similarity in language between the pertinent provisions of the Norris-LaGuardia Act and that of the Labor Management Relations Act, the following statement by

the Supreme Court of Pennsylvania in Navios Corporation v. National Maritime Union of America, 402 Pa. 325, 166 A. 2d 625, 630, is significant:

> "The definition of labor dispute in the National Labor Relations Act is identical with the definition of labor dispute in the Norris-LaGuardia Act, except that the latter Act does not include the word 'tenure' and uses the conjunctive phrase, 'whether or not,' instead of the more simple 'whether.' It follows, therefore, that if the facts of a case constitute a labor dispute within the meaning of the Norris-LaGuardia Act, they also constitute a labor dispute within the meaning of the National Labor Relations Act. * * *"

Certiorari was denied, 366 U.S. 905, 81 S.Ct. 1047, 6 L.Ed. 2d 204, and rehearing denied, 366 U.S. 941, 81 S.Ct. 1658, 6 L.Ed. 2d 852.

Petitioners then contend that the Federal Government has "preempted the field of labor disputes and thereby greatly limited the injunctive power of the State courts in area of labor disputes". If by "labor dispute" the petitioners mean an unfair labor practice, or a matter concerning the appropriate bargaining unit or the proper representative, as defined in the Labor Management Relations Act, petitioners' contention may be conceded. In Graybar Electric Co. v. Automotive, P. & A. I. Emp. Union, Local 618, 365 Mo. 753, 287 S.W. 2d 794, decided in 1956, the Supreme Court en Banc reviewed the Federal decisions, Garner v. Teamsters, C. & H. Loc. Un. 776, 346 U.S. 485, 74 S.Ct. 161, 98 L.Ed. 228; Weber v. Anheuser-Busch, Inc., 348 U.S. 468, 75 S.Ct. 480, 99 L.Ed. 546, which excluded State courts from assuming jurisdiction of labor controversies that came within the ambit of the Labor Management Relations Act. In that case the employer sought to enjoin peaceful picketing on the grounds that it was for the unlawful purpose of forcing the employer to coerce

his employees into joining the Union, in violation of Section 29, Article I of our Constitution. The Union pleaded that if the employer's allegation was true, it constituted an unfair labor practice, and that the Labor Board therefore had exclusive jurisdiction of the case. Our Supreme Court concurred with this argument. In the later case of Swope v. Emerson Elec. Mfg. Co., Mo. 1957, 303 S.W. 2d 35, cert. den. 355 U.S. 894, 78 S.Ct. 268, 2 L.Ed. 2d 192, fifteen former employees sued the employer for damages claiming that they had been discharged because of their union activities. The employer raised the defense that the allegation, if true, constituted an unfair labor practice, and that the Labor Board had exclusive jurisdiction. The Supreme Court agreed that the trial court had had no jurisdiction, and reversed judgments in favor of the former employees. For other cases holding that our State courts have no jurisdiction where an unfair labor practice is involved see Wolff v. Owsley, Mo. App., 332 S.W. 2d 462; United Brick & Tile Division of American-Marietta Co. v. Wilkinson, Mo. App., 325 S.W. 2d 50; Swift & Co. v. Doe, Mo. App., 315 S.W. 2d 465, cert. den. 79 S.Ct. 587, 359 U.S. 911, 3 L.Ed. 2d 574, cert. den. 79 S.Ct. 589, 359 U.S. 915, 3 L.Ed. 2d 577; McAmis v. Panhandle-Eastern Pipe Line Co., Mo. App., 273 S.W. 2d 789.

It should be pointed out, in passing, that not every matter involving a labor organization or a matter of labor relations is necessarily an unfair labor practice or even a labor dispute of which the Board has exclusive jurisdiction. For example, see Adams Dairy, Inc. v. Burke, Mo. 1956, 293 S.W. 2d 281, cert. den. 352 U.S. 969, 77 S.Ct. 360, 1 L.Ed. 2d 323, where the purpose of the Union's

informational campaign and boycott was enjoined as a concerted illegal activity because its sole objective was to injure the Company's business. It is also of interest to note that by Chapter 296, V.A.M.S. (Laws 1961, p. 439) the General Assembly has declared it to be an unlawful employment practice to discriminate against any individual because of race, creed, color, religion, national origin, or ancestry; and has provided for the enforcement of its orders to cease and desist from any such discriminatory practice. In the light of this declared public policy, and in view of the decision of the Supreme Court of the United States in Hughes v. Superior Court of California for Contra Costa County, 339 U.S. 460, 70 S.Ct. 718, 94 L.Ed. 985, it is at least doubtful whether the petitioners' demands for the employment of four Negroes, solely because of their race, may be considered a labor dispute. In that case, by repeated decisions, the Supreme Court of California had declared that discrimination in employment on the basis of color was against the public policy of that State. A group calling themselves Progressive Citizens of America demanded of Lucky Stores, Inc., that it hire Negroes at its grocery store, as white clerks quit or were transferred, until the proportion of Negro clerks to white clerks approximated the proportion of Negro to white customers, about 50%. Upon Lucky's refusal of the demand the store was picketed. Lucky obtained a temporary injunction against the picketing, the Supreme Court of California upheld it, and the Supreme Court of the United States granted certiorari.

Neither the Norris-LaGuardia Act nor the Labor Management Relations Act was mentioned in the Supreme Court's opinion, nor

was the New Negro Alliance case, supra, cited. The question presented, in the court's words, was, "Does the Fourteenth Amendment of the Constitution bar a state from use of the injunction to prohibit picketing of a place of business solely in order to secure compliance with a demand that its employees be in proportion to the racial origin of its then customers? * * *" (339 U.S. 461). Holding that it does not, the Supreme Court said (l.c. 466):

> "* * * We cannot construe the Due Process Clause as precluding California from securing respect for its policy against involuntary employment on racial lines by prohibiting systematic picketing that would subvert such policy.* * *"

In any event, the irrefutable answer to petitioner's argument is that while the jurisdiction of state courts has been restricted by the Labor Management Relations Act, their right to enjoin violence and breaches of the peace has not been eliminated, which is all that was restrained in the instant case. This was recognized in Garner v. Teamsters Union, supra, where the Supreme Court of the United States said (346 U.S. 488):

> "The national Labor Management Relations Act, as we have before pointed out, leaves much to the states, though Congress has refrained from telling us how much. We must spell out from conflicting indications of congressional will the area in which state action is still permissible.
>
> "This is not an instance of injurious conduct which the National Labor Relations Board is without express power to prevent and which therefore either is 'governable by the State or it is entirely ungoverned.' In such cases we have declined to find an implied exclusion of state powers. International Union v. Wisconsin Board, 336 U.S. 245, 254. Nor is this a case of mass picketing, threatening of employees, obstructing streets and highways, or picketing homes. We have held that the state still may exercise 'its historic powers over such traditionally local matters as public safety and order and the use of streets and highways.' Allen-Bradley Local v. Wisconsin Board, 315 U.S. 740, 749. * * *"

Our Supreme Court recognized this principle in Graybar Elec. Co. v. Automotive, P. & A.I. Emp. Un., supra, and in Swope v. Emerson Elec. Mfg. Co., supra. See also Angle v. Owsley, Mo. App., 332 S.W.2d 457.

There was sufficient evidence before the trial court upon which to issue the restraining order. Civil Rule 92, V.A.M.R., governs the issuance of restraining orders and injunctions. Rule 92.01 requires that a petition be filed, and, when the order or injunction is granted in vacation, it shall be signed by the judge or magistrate and returned together with the bond to the office of the clerk. Rule 92.02 provides:

> "When it shall appear by the petition that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of some act of the defendant, the commission or continuance of which, during the litigation, would produce injury to the plaintiff, or when during the litigation, it shall appear that the defendant is doing, or threatens, or is about to do, some act in relation to the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual, a temporary injunction or restraining order may be granted to restrain such act."

In this case, apparently, the restraining order was issued based on the bank's petition, verified by an affidavit, that these petitioners had threatened to physically hinder and interfere with the carrying on by the bank of its business, and that of its customers with it. As already indicated, violence, intimidation and similar acts may be restrained and enjoined even though they are threatened or committed in connection with a labor dispute. In that connection see also State ex rel Allai v. Thatch, 361 Mo. 190, 234 S.W.2d 1 and Hamilton-Brown Shoe Co. v. Saxey, 131 Mo. 212, 32 S.W. 1106. Procedurally, the issuance of a restraining order on the strength of a verified petition and a bond received the court's approval in State ex rel Allai v. Thatch, supra.

The last matter common to the answers filed by the petitioners in all three cases is that the fines and sentences imposed by the circuit court are such as to be held within the prohibition in the Constitution of the United States and the Constitution of Missouri forbidding cruel and unusual punishment.

Whether a punishment is cruel and unusual or inhuman is not an abstract question nor one to be decided upon precedent but is properly decided upon the facts of each case. Robinson v. California, 370 U.S. 660 (1962). In this case it is apparent from a consideration of the sentences that there has been no discrimination by virtue of race, color or creed in the punishment fixed by the circuit court. The activities of the petitioners found herein to constitute contempt go far beyond those areas of freedom of speech and peaceful assembly protected by the Constitution of the United States and of Missouri. It has been held that the First Amendment does not confer the right to persuade others to violate the law. Kasper v. Brittain, 245 F. 2d 92. So far as we are aware neither does any other provision of either constitution, nor does any provision of any document that embodies the governmental principles of a people who live by the rule of law. It should also be noted that we are not here dealing with uninformed, uneducated citizens unable to fully comprehend their nature and consequences of their acts. Of the nine petitioners whose applications are contained in 31,777, three are members of the bar, several are school teachers, one a minister, and one is an alderman of the City of St. Louis. Many of the remaining petitioners are students at the college level. The education level as well as the social and economic standing of these petitioners illustrates the deliberate, willful and contemptuous nature of their acts.

The petitioners' would have this court reduce the amount of the fine and/or sentence in this habeas corpus proceeding. Ex parte Page, 49 Mo. 291, ruled this matter in 1872, and the same rule applies today. Petitioners have failed to cite any case to the contrary nor are we aware of any. Such an action would do violence to the historic purpose of writs of habeas corpus. We hold we have no authority, in a habeas corpus proceeding, to reduce the fines or sentences imposed, neither have we any authority to order the circuit court to do so. For the rule in other jurisdictions see 39 C.J.S., Habeas Corpus, Sec. 121.

As held herein these petitioners were found guilty of criminal contempt, and in such cases the punishment is punitive to vindicate the authority of the court and to uphold the majesty of the law. Sec. 476.120, RSMo 1959, V.A.M.S., provides that punishment for contempt may be by fine or imprisonment or both in the discretion of the court. Earlier statutes from which this section is derived limited imprisonment for contempt to a $50.00 fine, or 10 days in jail, or both. See Laws of Missouri, 1919, p. 271; see also the dissent of Lamm, J., in Chicago, B & Q. Ry. Co. v. Gildersleeve, Mo., 118 S.W. 86, which dissent finally became the law in Ex parte Creasy, supra. The only purpose the legislature could have had in removing these limits was to evidence their intent to leave to the courts the matter of punishment suitable to the severity of the offense involved in each case.

See 476.110, RSMo 1959, V.A.M.S., is essentially the same as that found in 18 U.S.C.A., Sec. 401 (3). Under the Federal practice imprisonments for terms of from 1 to 4 years have been upheld upon

convictions for contempt as being neither abuses of discretion nor cruel and unusual punishment within the meaning of the Eighth Amendment which in substance is the same as Art. I, Sec. 21, Constitution of Missouri. Brown v. U.S., 359 U.S. 41; U.S. v. Thompson, 214 F. 2d 545. U.S. v. Hall, 198 F. 2d 726. With respect to the extent of the fine imposed, in United States v. United Mine Workers of America, 330 U.S., 258 at 303, it was held:

> "* * * In imposing a fine for criminal contempt, the trial judge may properly take into consideration the extent of the willful and deliberate defiance of the court's order, the seriousness of the consequences of the contumacious behavior, the necessity of effectively terminating the defendant's defiance as required by the public interest, and the importance of deterring such acts in the future. Because of the nature of these standards, great reliance must be placed upon the discretion of the trial judge."
> (Emphasis supplied.)

In Osborne v. Purdome, supra, the sentence was for 10 months and the fine assessed was fixed at $1,000.00. We hold that the fines and sentences imposed upon these petitioners are not in violation of the provisions of the Constitution of the United States and of the State of Missouri prohibiting cruel and unusual punishment.

We pass now to a consideration of the proceedings with regard to the petitioners whose applications for our writ we have consolidated in file 31,778 and whose alleged contempt occurred next in point of time. What had taken place to cause the motion for attachment to be filed is perhaps best stated in the following excerpt from the petitioners' brief: "On Friday, October 4, 1963 the petitioners herein went to the Jefferson Bank and Trust Company and entered said bank carrying signs pinned or fastened to them reading '4 JOBS'. Inside the bank they sang freedom songs, locked arms, sat and stood in front of the entrances of said bank. While petitioners were inside said

bank, an official of the bank read to them a copy of the restraining order dated August 30, 1963. The petitioners had not prior to that time been served with a copy of the restraining order. After said order was read by the official of the bank, a request was made to petitioners to leave the bank. The petitioners refused to leave the bank. There were on hand police officials who promptly arrested petitioners and placed them in custody, removed them bodily from the bank to the police headquarters. They were all charged with peace disturbances and with trespassing. The arrests and placing petitioners in custody took place between 4:00 p.m. and 6:00 p.m. on Friday, October 4, 1963."

These proceedings were begun on October 4, 1963 by the filing of a pleading styled "Motion for Issuance of Attachment for Contempt Pursuant to Rule 92.15 and Section 526.220 Revised Statutes of Missouri 1959." This motion was filed in the same action and under the same heading as the original proceeding for the restraining order and injunction. By that motion the bank moved for the issuance of an attachment of the bodies of the petitioners Goins, Lee, Glenn, Jones, Ford, Grand, Roberta Tournour "* * * and other person or persons unknown for the violation of the temporary restraining order issued by this Court on August 30, 1963 (which is now in full force and effect) by physically hindering and preventing customers of the plaintiff and other members of the public from customary access to tellers' windows by locking arms in front of the doors of plaintiff's place of business, or sitting in, lying in, standing in or singing in plaintiff's place of business and thereby interfering with plaintiff's business or by harrassing (sic) plaintiff's employees or

customers in front of, around or in plaintiff's place of business." Proof of service of the attachment order on each of these petitioners was filed on October 4th.

Upon their arrest, the petitioners were taken forthwith before the Judge of Division No. 2 of the Circuit Court. After the petitioners were brought into the courtroom, Mrs. Wilson, Mrs. Younge, and Messrs. Cahill, Wilson and Ratermann entered their appearances for all the petitioners. The transcript shows that in open court the trial judge read the motion for attachment, the temporary restraining order and the order of attachment to the petitioners. Evidence was presented by 3 witnesses that these 7 petitioners were inside the bank, blocking the exits and doing other things in violation of the restraining order; that the restraining order was read to them by an officer of the bank; and that these 7 petitioners refused to leave but continued their acts of violation of the restraining order. Counsel for the petitioners offered no testimony, although participating in cross-examination of these witnesses. The court then entered its order setting bond for five of these petitioners in the amount of $1,500.00 each and for 2 of them in the amount of $5,000.00. It further ordered "* * * that said alleged contemptors (sic) be and appear in this Court and in Division Number 2 thereof on Monday, October 7th, 1963 at 10 o'clock A.M., and there and then to show cause, if any, why they should not be punished for contempt of Court in violation of the Court's restraining order heretofore issued the 30th day of August, 1963."

At the proceedings on October 7th, the petitioners were represented by the same counsel who appeared for the petitioners whose applications are consolidated in 31,777. Counsel for petitioners

requested a continuance of 3 weeks. The trial court denied the motion for a continuance, and the petitioners requested time to apply to this court for a writ of prohibition. This was granted, the writ filed, and upon its denial and counsel's return to the circuit courtroom, the court asked, "Are you ready, gentlemen?" The transcript discloses that Mr. Wilson, counsel for petitioners, stated, "We are ready, Your Honor."

Trial then proceeded over a period of several days, concluding on the 11th of October. Nineteen witnesses were called by the plaintiff and each of the petitioners testified in his or her behalf. Guardians ad Litem were appointed for the petitioners Glenn, Lee, and Tournour upon the discovery that they were minors. At the close of the evidence against petitioners, their counsel moved for a directed verdict or an "acquittal." This motion was renewed at the close of all the evidence, and was overruled by the court.

On October 25, 1963, the court entered its findings of fact and judgment as to each of these petitioners which are all very similar. The court recited the proceedings of October 4th as herein stated, found that each petitioner was present at the trial, represented by counsel, and had presented evidence in his or her behalf. The restraining order is then set out in full. The court also found that each of these petitioners had actual knowledge of the temporary restraining order by reason of having it read to them on October 4th. The petitioners were each found to have willfully disobeyed and violated that restraining order by:

> "(1) Entering the banking premises of Jefferson Bank and Trust Company and standing, sitting, and lying in front of the entrance to said bank, thereby physically hindering, obstructing, interfering with and harassing persons desiring to enter said bank's premises for the purpose of conducting their business.

"(2) Congregated and loitered individually and in a group inside said bank, thereby interfering with, hindering and annoying persons in the conduct of their business with said bank.

"(3) While inside said bank, and acting as aforesaid, and after said Restraining Order was read to him, the defendant, having been requested to leave said bank, refused to do so, thereby interfering with the proper and normal conduct of the business of Jefferson Bank and Trust Company.

"It is further found, adjudged and decreed that the aforesaid acts and conduct constitute offenses against the majesty of the law and the dignity and authority of this Court.

"It is further found, adjudged and decreed that defendant LOUIS FORD is guilty of willful disobedience of said Temporary Restraining Order, and is punishable as for criminal contempt."

Each of the petitioners received a fine of $500.00 and jail sentences as follows: Goins, 90 days; Lee and Glenn, 60 days; Jones and Ford, one year; Grand, 180 days; and Mrs. Tournour, 120 days. Each was also to pay one-seventh of the costs.

The recitals of the judgment entered as to each of the seven petitioners whose applications are consolidated into 31,778 are such that the facts need only briefly be referred to. This is for the reason that each of these petitioners, then having notice of the restraining order, were found to have: (1) entered the bank and to have stood, sat or lain in front of the entrance to the bank thereby physically hindering, obstructing and interfering with persons desiring to enter the bank to conduct business therein; (2) to have congregated and loitered inside the bank and thereby to have interfered with, hindered and annoyed persons conducting business with the bank; and (3) to have refused to leave the bank after the restraining order was read to them and upon being requested to do so thereby

interfering with the proper and normal conduct of the business of the bank. It is obvious that these acts, if found to have been committed, constituted violations of paragraphs (a), (b), and (c) of the restraining order as that order is set out earlier herein.

In that portion of their brief recited earlier in this opinion the petitioners admitted they went into the bank; that while they were inside, they sang, locked arms, sat and/or stood in front of the entrance to the bank; that "While petitioners were inside the bank an official of the bank read to them a copy of the restraining order dated August 30, 1963; that after this order was read to them they were requested to leave the bank; and that "The petitioners refused to leave the bank." We need not rule whether these admissions in the brief are sufficient, for they constitute uncontroverted facts. The petitioner Ford testified he went into the bank and stood and sat in front of the doors. He also identified himself in one of the exhibits which shows that petitioner linking arms with others and effectively blocking a doorway. Perhaps his testimony can best be summed up by this excerpt: "Q. Which doors did you stand in front of the bank that day, sir? A. I tried to stand in front of all of them. Q. Which doors did you sit in front of? A. The front door. Q. Which doors did you lie down in front of? A. I tried to lie down in front of all of them." There was evidence that his attempts to block all the entrances were successful. He also identified the petitioner Jones in an exhibit which shows that petitioner blocking an entrance to the bank. Jones testified: "A. Well, I sat in front of the door, stood in front of the door and I sang. * * * Q. And which one of the doors

did you sit at, stand at and sing at? A. I sat in the front door on the Washington side, I stood at the door, at the entrance to the savings and loan and I stood in front of the service entrance door." This petitioner also admitted the correctness of Ford's identification of him in the exhibit showing him blocking one of the entrances and, in turn, identified Ford in the exhibit showing that petitioner blocking one of the entrances. Both Jones and Ford admitted they had to be carried out of the bank. The petitioner Tournour admitted she both stood and sat in front of entrances to the bank and identified herself in an exhibit showing her locked arm in arm with others later identified as the petitioners Goins, Lee, Glenn and Grand and blocking an entrance to the bank. She also had to be carried from the bank. The petitioner Glenn testified as follows: "Q. What did you do now after you got there? A. I went inside the bank, sir. Q. You went inside the bank? A. Yes, sir. Q. What did you do inside the bank? A. I demonstrated by singing, sitting and standing. Q. And where did you stand in the bank? A. At the south door. Q. At the south door. Is that the only door at which you stood? A. Yes, sir. Q. Where did you sit in the bank? A. At the north and south door. Q. You sat at the north and the south doors? A. Yes, sir. Q. And you stood at the south door; is that right? A. Yes, sir." This petitioner also identified himself in another photograph showing him blocking an entrance to the bank. The petitioner Lee admitted that he sat and stood in entrances to the bank and that he sang while in the bank stating that he did so with the purpose of "* * * using my person to make it inconvenient for people to enter the bank." The petitioner Ian Grand

admitted he went inside the bank and joined a line of people blocking an entrance. The petitioner Goins identified himself in a line blocking the door in an exhibit showing himself, Mrs. Tournour, Glenn, Lee, and Grand blocking an entrance. This petitioner testified he went into the bank to close an account he had there but rebuttal evidence and exhibits proved that no balance had been in this account since September 25th. The witnesses Norton, Eitzman and Matteson identified the petitioners as shown in the various exhibits and testified they saw them in the various poses before the entrances as portrayed by the exhibits. The witness Matteson also identified the petitioner Ford lying in front of one of the entrances as shown in a photograph admitted into evidence. The effect of the testimony of these witnesses was that they heard Mr. McConnell read the injunction to the petitioners and heard him ask the petitioners to leave the bank. The sound movies admitted into evidence proves the reading of the injunction and the request that the petitioners leave the bank. The witnesses Steck, Mrs. Hendrickson, Smith, Mayo, Mrs. Lay, Elrod, and Dorris Esparcia each testified that they attempted to get in or out of the bank on October 4th in order to transact business and either could not or did so at great personal inconvenience and some physical danger. The witness Esparcia had to crawl between the legs of two of the demonstrators to get out of the bank. The witness Mayo had to force his way in and then force his way back out. Other witnesses had to step over the demonstrators to get in or out of the bank. Mr. Ross, president of the bank, testified that he saw some people known to him to be customers of the bank outside the bank and unable to get in.

This evidence sustains the finding these petitioners had actual notice of the restraining order. The evidence also sustains the finding that these petitioners were guilty beyond a reasonable doubt of violations of paragraphs (a), (b), and (c) of the restraining order as found in the specifications set forth in the judgment entered as to each petitioner.

These petitioners also contend that they were denied counsel while in custody, that the bail fixed by the court was excessive, and that they were afforded an inadequate time to prepare their defense.

The contention that these petitioners were denied the opportunity to consult with counsel is without merit. It is unsupported by the allegation of any factual matters which might go to prove its veracity. Moreover, no such facts appear in the transcript. What does appear plainly in the transcript is that five counsel who represented petitioners were present in the courtroom when they were brought before the court. The petitioners were represented by these members of the bar in the proceedings that then took place from the very inception of those proceedings. In view of the admissions of guilt made by each of these petitioners, it is difficult to ascertain how this contention, assuming it to be true, could prejudice the petitioners.

The court heard testimony which strongly indicated that these petitioners had willfully and deliberately violated the restraining order. It issued an order to show cause why the petitioners should not be punished as for criminal contempt and, in accordance with Rules 35.01 and 92.15, supra, fixed the bail of 5 of the petitioners at $1,500.00 each and 2 of them at $5,000.00. It requires no

citation to substantiate that the amount of bail is discretionary with the court. It should be remembered that these petitioners were alleged to have violated this injunction immediately after completion of two weeks of trial on the violations by those petitioners whose applications are consolidated into 31,777. This trial had been widely publicized. In view of the alleged violation of these petitioners immediately following that matter the trial court cannot be held to have abused its discretion in ordering bail to be fixed at $1,500.00. With respect to the two petitioners, Mr. Ford and Mr. Jones, whose bail was fixed at $5,000.00 each, the evidence is that Jones was a nonresident and Ford had testified in the trial which the judge had just concluded that he had violated the injunction on that occasion also. There is no merit to this contention.

The petitioners then contend that they were denied an adequate time to prepare their defense in violation of the due process clause of the Fourteenth Amendment. As stated earlier herein when dealing with the petitioners' contentions with regard to a lack of due process as to the attachment proceedings, an alleged contemnor is entitled to a notice which fairly and fully informs him with what he is charged and given him so as to afford a reasonable time to prepare his defense. G. v. Souder, supra. In the instant case counsel for the petitioners announced ready for trial after his application for a writ of prohibition was denied. The petitioners have failed to allege in their answers or state in their brief any facts that would lead to any reasonable conclusion that they

were in fact prejudiced by going to trial on October 7th. As stated earlier herein each of the petitioners took the stand and in fact admitted his or her guilt. There was no real controversy as to what had occurred. Under such circumstances there is no merit to the contention they were denied due process of law in that they were deprived of an adequate time to prepare their defense.

These seven petitioners raise a contention with regard to the restraining order being void which is not contained in either of the answers filed in 31,777 or 31,779. They contend the restraining order was void as to them because there was no service of that order upon them. The general rule is that if a defendant has knowledge of the issuance of an injunction or restraining order, he will be bound thereby as though it had actually been served. 43 C.J.S., Injunctions, Sec. 208. Angel Sheet Metal Equipment, Inc., v. Shewman, Mo. App., 307 S.W. 2d 694, and cases cited therein at l.c. [2], p. 696. In the instant case there can be no question but what the petitioners had knowledge of the temporary restraining order and of its specific provisions. A copy of that order was read to them by Mr. McConnell, while they were in the bank. The moving pictures introduced into evidence so show and numerous witnesses so testified that they observed and heard McConnell read the restraining order. Certainly, the petitioner Ford had excellent knowledge of that order, for he had been a witness in case 31,777. There is no merit to this contention.

The evidence as to the petitioners Michela Grand, Pollack and Peake can best be understood if one keeps in mind the general situation shown to have existed at the bank on October 7, 1963. As stated earlier herein, the bank had made certain additional preparations in advance of the demonstration occurring on that day. An officer of the bank was stationed at each entrance to the bank along with a bank guard. The doors were to be opened only to persons recognized as customers of the bank or to those who stated they had business with the bank or wished to become customers. It appears that one method the demonstrators had used in the previous demonstrations was to line up before the tellers' cages and change coins and bills into coins of smaller denomination. The bank had designated one teller's cage, No. 10, as a change window and had put up a sign so signifying. In addition, the signs stated that a charge of 25¢ was to be made for each transaction to those not customers of the bank. Large printed signs had been posted on every door opening into the bank, in the lobby, and at four positions outside the bank. These signs had red lettering which read, "Warning to all Demonstrators" followed by slightly smaller black lettering stating: "The following Court Order has barred any interference with the business of this bank." Photostats or some similar reproductive process of the restraining order were attached to the sign. Ten such signs were posted. In addition, the bank had caused a public address system to be installed with three speakers outside the building and two inside. An assistant vice president was stationed at the microphone, and a statement was prepared for him to read at certain intervals. That statement was

read repeatedly during the demonstration of October 7 and could be clearly heard inside and outside the bank building. In essence, the statement recited that the restraining order which had been issued barred any interference with the business of the bank. It warned that entry into the bank would subject a person to arrest if he was not a customer of the bank. It asked all those in the bank not transacting business with the bank to leave and warned again of arrest if any failed to do so. In addition to these measures, the bank had arranged with the Sheriff's office that two or three deputy sheriffs be present and that they have copies of the restraining order with them for service upon any who violated the terms thereof. In spite of these measures, the demonstration progressed to a point where there were people in the bank sitting and/or lying in front of the tellers' cages as well as others outside the bank who were lying underneath or in front of vehicles stopped near the bank so that those vehicles could not be moved.

These proceedings were begun in the same manner as they were in the cases of the petitioners just previously discussed and, as was true in that proceeding, were filed in the case of the original restraining order and injunction. A motion for the issuance of attachment for contempt was filed with the circuit court listing these three petitioners and two others not here involved and requesting the court order then attached.

> "* * * for violation on October 7, 1963 of the Temporary Restraining Order issued by this Court on August 30, 1963 (which is in full force and effect), in one or more of the following respects:

"(1) Physically hindering and preventing customers of plaintiff and other members of the public from entering and leaving plaintiff's place of business by locking arms in front of entrances.

"(2) By entering said banking premises and setting (sic) in, lying in, standing in, milling about, and singing and chanting therein, and thereby interfering with the proper and normal conduct of plaintiff's banking business.

(3) Standing and loitering in front of tellers' windows so as to prevent customers of plaintiff's bank from utilizing the facilities for the conduct of their proper and normal business with the plaintiff.

"(4) Harrassing (sic) plaintiff and hindering and interfering with the proper and normal conduct of plaintiff's business by entering said bank for the purpose of making change which purpose was solely to harrass (sic) plaintiff and interfere with the normal conduct of its business.

"(5) Harrassing (sic) plaintiff and hindering and interfering with the proper and normal conduct of plaintiff's business by entering said bank for the purpose of becoming customers of the bank which purpose was solely to harrass (sic) plaintiff and interfere with the normal conduct of its business.

"(6) Refusing to leave plaintiff's banking premises after having been requested to do so, and by so refusing to harrass (sic) plaintiff and interfere with the normal conduct of plaintiff's business."

The court's order also shows that it appointed Messrs. Millsap and Montrey "to present evidence of contempt." Mrs. Younge and Mr. Jones entered their appearances for these petitioners on the same day. The attachment was issued and the Sheriff brought these petitioners forthwith before the court. The court read the notice to the petitioners. It contains the same specifications as set out above from the motion, and concludes: "* * * The foregoing charges and specifications constitute offenses against the majesty of the law and the dignity and

authority of this Court and you are hereby punishable for criminal contempt." The trial of the petitioners of No. 31,778 was then in process and the trial of these petitioners was continued from time to time until October 14th when the trial began.

Before trial began on the 14th of October, a Guardian ad Litem was appointed for the petitioners Pollack and Michela Grand, they having been found to be minors. Among other pleadings and motions filed that day on petitioners' behalf was a joint return to the order to show cause for contempt. The petitioners filed a motion for a continuance, to dismiss, and for a severance. These motions were overruled and their counsel announced, "We are ready to proceed, Your Honor." The trial was concluded on October 16th and the court announced that it would render judgment on October 25th.

In the judgment entered as to each of these petitioners, the restraining order is set out, a finding made that it was in full force and effect when the acts by these petitioners occurred, the appearance of the petitioners before the court on October 7th is recited, and the notice read to the petitioners in open court is set out in full. As to the petitioners Michela Grand and Daniel Pollack, the court proceeded to find as follows:

> "It is further found that Michela Grand was aware of and had actual notice of the issuance of the Court's Restraining Order prior to her entry into the banking premises on October 7, 1963, as hereafter found; such actual notice was received by the said Michela Grand by being outside the premises of the Jefferson Bank and Trust Company on October 7, 1963, when notices concerning said Restraining Order were read over a public address system there at said bank; further, that copies of said Restraining Order were posted about the premises of the bank in such positions that the said Michela Grand saw or should have seen the same; further that while the

said Michela Grand was inside the banking premises on October 7, 1963, a copy of theCourt's Restraining Order was given to her by a Deputy Sheriff of this Court."

The court found that these petitioners had willfully disobeyed and violated the restraining order by:

"(1) Harrassing (sic) plaintiff and hindering and interfering with the proper and normal conduct of plaintiffs business by entering said bank for the purpose of making change, which purpose was solely to harrass (sic) plaintiff and interfere with the normal conduct of its business.

"(2) Refusing to leave plaintiff's banking premises after having been requested to do so and by so refusing to harrass (sic) plaintiff and interfere with the normal conduct of plaintiff's business.

"(3) By entering said banking premises and lying in said premises and thereby interfering with the proper and normal conduct of plaintiff's banking business."

These acts and conduct were found to constitute offenses against the majesty of the law and the dignity and authority of the court. These petitioners were found guilty of willful disobedience of the temporary restraining order and were to be punished as for criminal contempt.

The judgment entered as to the petitioner Peake differs only in the fact that he was not found guilty of the last specification; that of entering the bank premises and lying in them, thereby interfering with the proper and normal conduct of the bank's business.

Each of these petitioners received a different sentence. The petitioner Michela Grand received 120 days; Pollack received 60 days; and Peake received one year in jail. Each also received a fine of $500.00 and was to pay one-third of the costs.

Each of the petitioners Michela Grand, Pollack, and Peake were found to have had actual notice of the issuance of the restraining order prior to his or her entry into the bank on October 7th. This finding is amply supported by the evidence. As stated, the statement warning demonstrators against entering the bank was repeatedly read over the public address system and the testimony and photographic exhibits show that one could not enter the bank without seeing one or more of the signs containing the restraining order itself. Moreover, Michela Grand can reasonably be held to have had notice from the fact that her husband, Ian Grand, was arrested earlier along with those petitioners whose applications for habeas corpus are consolidated in 31,778 and dealt with earlier herein. The petitioner Peake was shown to have been in court during some of the proceedings regarding the trial of those who had earlier committed acts the trial court found contemptuous. In addition to the above evidence, there was testimony that each of the petitioners was served with a copy of the restraining order while he or she was in the bank on October 7th and prior to their arrest on that date.

The petitioners Michela Grand and Danny Pollack were found to have violated the restraining order by: (1) entering the bank for the sole purpose of making change in order to harass the bank and interfere with the normal conduct of its business; (2) refusing to leave the bank after being requested to do so and by so refusing to harass the bank and interfere with the normal conduct of its business; and (3) to have entered the bank and to have laid down therein, thereby harassing the bank and interfering with the normal conduct of its

business. The petitioner Peake was found to have violated the restraining order in only the manner charged in (1) and (2) above. There can be no doubt that a person found to have done any one of these three acts would be in violation of paragraphs (b) and (c) of the restraining order as those paragraphs are set out earlier herein.

The evidence as to Michela Grand was that she came into the bank at about 4:50 P.M. and walked up to the line in front of teller's window No. 10. By the time she reached the window there was a line of 7 or 8 people in back of her waiting to get to this window. When her turn came, she stood there for several minutes and was then asked to leave the bank. She made no reply, whereupon a deputy sheriff served her with a copy of the restraining order. She was again asked to leave the bank and was told that if she continued to stand in front of the cage, she would be arrested. She again made no reply but sat down on the floor in front of the tellers' cages with her back to the counter. During this time the statement previously referred to was read over the public address system at least once. It had also been read prior to her entry into the bank and carried over the outdoor speakers beginning at 4:30 P.M. This petitioner remained on the floor for some 10 to 15 minutes, either sitting down or in a prone position. During this time, she was asked to leave the bank and refused to do so. She was put on a stretcher and moved out of the bank. Photographs were introduced into evidence showing this petitioner in several positions on the floor of the bank and also as she was put on the stretcher and carried from the bank.

The evidence as to the petitioner Pollack is very similar. He entered the bank and went to window No. 10. When he reached the teller he stood before the cage. There were people in line behind him. After this continued, he was told that he would have to move; that he could not block the teller's window. The petitioner made no reply and continued to stand in the same position. He was then served with a copy of the restraining order. While this petitioner was standing in front of the teller's window, the statement warning the demonstrators was read over the public address system. He was then told that if he continued to block the window, he would be arrested. The petitioner then sat down on the floor and remained on the floor until he was carried out. Photographs introduced into evidence show Pollack on the floor, being put on a stretcher, and also being carried from the bank.

The petitioner Peake made 2 appearances in the bank. The first time he came in at about 4:40 p.m. Peake is a paraplegic and was pushed in his wheelchair up to window No. 10. He offered a $1.00 bill and was given change. He stayed there for a short time even though others were then trying to get change and then left the lobby of the bank. At about 4:55, Peake came into the lobby again. On this occasion he located himself in about the center of the lobby, where he was interviewed by representatives of news media. While Peake was in the approximate middle of the lobby, the statement warning of the issuance of the restraining order was read over the loudspeakers. While he was in that same position, several officials of the bank and at least one police officer had conversations with him. The witness Houston, an official of the bank, asked Peake if

he had any business with the bank. Peake replied that he had none but wanted to look around. Houston then asked this petitioner if he was a demonstrator to which Peake replied that he was. Houston then asked him to leave the bank and Peake refused to leave. Peake was then served with a copy of the restraining order. Mr. Ross, an officer of the bank, told Peake the bank did not want him as a customer and asked him to leave. He replied "I won't go." Peake was then warned of his arrest if he did not leave, and Peake replied "That is fine, arrest me and arrest this man behind me too," pointing to the man pushing his wheel chair. The witness Eitzman, a police officer, testified that he asked Peake if he had any business in the bank and that Peake replied he had none. Major Eitzman then told him that the bank had complained about his loitering in the lobby and asked him to leave. Peake again refused to leave.

The petitioners did not take the stand nor did they offer any testimony. Their entire defense was developed by their counsel in cross-examination of the witnesses offered by their opponents. This defense took three principal courses. First, that there were too many policemen and deputy sheriffs at the scene of the demonstration. Second, was the contention that the demonstration was justified. To develop this point, they asked questions of Mr. Ross, an officer of the bank, such as "Do you believe that every man should have a decent job, Mr. Ross?" Another witness was asked if it was true that James Peake had said that "* * * nonviolent civil disobedience was justified in the best tradition of Christ, Thoreau, Gandy (sic) and Martin Luther King; * * *" The other defense which they attempted to establish by cross-examination dealt with the fact that the bank

was charging a service fee of 25¢ when it made change for those not regular customers of the bank. There was repeated cross- examination as to whether the bank was obliged under its charter and/or by the regulations under which it operated to exchange money without a service fee to anyone who requested it. There was no evidence offered on this matter. The bank's charter or the regulations referred to were never offered as evidence nor in any way proved. Of course, the question immediately arises as to whether these petitioners are the proper parties to enforce such regulations, if any do in fact exist. We do not deem it necessary to rule the point, for assuming the petitioners to be proper parties to enforce such regulations in this proceeding, the pertinence of these defenses in a proceeding wherein the petitioners are charged with willful and deliberate violations of a lawful restraining order is too nebulous to be given greater consideration than it has been herein accorded.

The evidence sustains the finding that these petitioners had actual notice of the restraining order. The evidence also sustains the finding that the petitioners Michela Grand and Daniel Pollack were guilty, beyond a reasonable doubt, of violations of paragraphs (b) and (c) of the restraining order as found in all three of the specifications contained in the judgment entered as to those 2 petitioners and the finding that the Petitioner Peake was guilty beyond a reasonable doubt of violations of paragraphs (b) and (c) of the restraining order as found in both of the specifications contained in the judgment entered as to that petitioner.

At this point, it is appropriate to dispose of the contention advanced by these petitioners that they are "business invitees"

and not in violation of the court's order when they entered the bank. Several answers to this contention readily spring from the factual statement above. The simplest of these it is apparent from the facts that two of these petitioners entered the bank without any real purpose of transacting business therein and, in fact, did not even attempt to transact even the business of getting change. Peake did present a dollar bill to be changed on his first trip into the bank, but made no attempt to do so on his second trip. Moreover, whatever benefit these petitioners could derive from the characterization of "business invitees" upon entering the bank was certainly lost to them by their departure from that characterization when they refused to leave the bank when repeatedly requested to do so and when they conducted themselves while in the bank in the manner shown by the evidence.

The contention advanced as to the appointment of special prosecutors in 31,779 is the same as that made with regard to the petitioners whose applications are consolidated into file 31,777, and the ruling there stated is equally applicable to that contention as made by these three petitioners. With regard to the restraining order, the contentions that were contained in the joint answer filed in 31,779 and the ruling on the point made earlier herein applies as well to these three petitioners. The petitioners whose applications were consolidated into 31,779 also contend that due process of law was denied them in that they were not granted an adequate time to prepare their defense. The principles of law stated earlier herein when this same contention was advanced by those petitioners whose applications are contained in 31,778 are equally applicable to the

petitioners here involved. Of course, the evidence differs somewhat. With regard to the petitioners whose applications were consolidated into 31,779, the evidence is that their counsel announced ready for trial upon the court overruling the motion for a continuance. These petitioners fail to allege in their answer or state in their brief any facts which would lead to the conclusion that they were denied due process by the court's action in proceeding to trial after their counsel announced ready. In view of the overwhelming evidence as to the guilt of these petitioners we cannot find them prejudiced by that action. There is no merit to this contention.

It follows from what has been herein held that the petitioners Curtis, Clay, Seay, Richards, Perkins, Ford, Ian Grand, Goins, Tournour, Jones, Lee, Glenn, Michela Grand, Pollack, and Peake are not illegally restrained, and as to these petitioners our writs should be quashed and these petitioners remanded to the custody of the respondents. As to the petitioners Howard, Thompson, Marian Oldham, and Charles Oldham, we hold they are illegally restrained in that the evidence does not support the finding that they were guilty, beyond a reasonable doubt, of any of the specifications found in the judgment entered as to each of them. Accordingly they are to be discharged forthwith. All concur.

CHARLES R. OLDHAM
ATTORNEY AT LAW
722 CHESTNUT - ROOM 1117
ST. LOUIS 1, MISSOURI
CENTRAL 1-0464

February 7, 1964

FEB 10 1964

Mr. Carl Rachlin
C. O. R. E.
38 Park Row
New York 38, New York

Dear Carl:

Enclosed please find copies of application for Writ of Habeas Corpus filed this day in Federal District Court. I anticipate that we will probably be ready for the Supreme Court in another week or ten days and request that you examine these pleadings, the previous pleadings filed before the Supreme Court of Missouri and the material I left in your care, custody and control and give me whatever suggestions you might have for changes, amendments, re-drafting that would be necessary in the Supreme Court of the United States.

Very truly yours,

Charles R. Oldham

CRO/jls

Enc.

Jefferson Bank & Trust
v. Curtis et al

July 20, 1964

Robert B. Curtis, Esq.
1204 Franklin
St. Louis 3, Missouri

Dear Bob:

The papers which you sent were very complete and enabled us to get a good view of what the legal situation is in the Jefferson Bank Case. Of course they refused to decide some of the big issues in your appeal and some parts of the decision seem not to be a correct statement of the law.

Below are a list of the issues which we think should become part of an appellate or trial brief on your behalf in the District Court:

1. As you indicated, N.A.A.C.P. v. Alabama is a <u>possible</u> source of assistance for two reasons:

   (a) The appellate court of a state has the right to look into the merits of the contempt judgment--this would probably include the question of the constitutionality of the statutes.
   (b) Another way that the decision might help is its proclamation of the right to freedom of association is being close to the greedom of speech. The Temporary Restraining Order restricts or discourages demonstrators who want to demonstrate against the bank's hiring practices from joining St. Louis CORE. Very candidly, I do not have much faith in this argument, but let us make it. What right to picket remained after the injunction?

2. The issue of whether the circut court had the right to convict the petitioners of criminal contempt instead of civil contempt. This concerns the right to know what one is charged and tried for -- elementary due process.

3. Whether the demonstrations are a labor dispute, is one which the Federal Courts should rule on. In connection

with this, we must consider the right of the state to stop certain types of conduct even though the main activity is a labor dispute.

4. The evidence does not seem to be conclusive beyond a reasonable doubt in the case of many of the petitioners.

5. Emphasis should be placed on the trial court's failure to provide these peitioners with the guarantees of due process of law provided for in the Missouri and Federal Constitutions; particularly the right to counsel, the right to prepare an adequate notice of the changes therin.

6. The defects in the indemnity bond is another issue that perhaps should be raised.

7. An important question for the Federal Courts is whether the state is in fact enforcing hiring discrimination by issuing the Temporary Restraining Order. Are the facts in the record clear on this?

8. These petitioners were arrested and convicted of breaching the peace and trespassing. Could either of these be sustained in a fair trial?

9. In light of the recent Supreme Court decisions on the applicability of the Fifth Amendment to the States, the introduction of evidence obtained in a civil E.B.T. is doubtful since it might constitute self incrimination.

10. Did the St. Louis Court of Appeals dismiss the question of the petitioners satus as "business invitees" too lightly? There seems to be more merit in that contention than it was given by the Court.

11. A problem which the U.S. District Court judge raised is why didn't the petitioners appeal to the Supreme Court judge from the State Court? Is this answered by the U.S. Court of Appeals sending it back for a hearing to the District Court?

12. The St. Louis Court of Appeals held that notice is not required in a criminal contempt proceeding. Does the statute require it? It appears to.

13. The question of the special prosecutor and his relationship to the bank is an interesting question. See recent case of Cox V. Louisiana, Louisiana Supreme Court.

14. The petitioners right to counsel at <u>every stage</u> of a criminal proceeding, as required by the Supreme Court, may have been denied.

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14. The petitioners right to counsel at <u>every stage</u> of a criminal proceeding, as required by the Supreme Court, may have been denied.

15. Peake's conviction and sentencing seem to be clearly a case of cruel and unusual punishment.

16. Another issue is the unconstitutionality of the Missouri statutes under which you were convicted.

These are the issues as we see them, looking over the briefs and decisions. Tell us which ones are omitted. Which points do you wish us to write up?

I hope we have been of some help to you in your battle against discrimination.

Cordially,

Carl Rachlin
General Counsel

CR:bmw

ROBERT B. CURTIS
ATTORNEY AT LAW
2847 UNION BLVD.
ST. LOUIS, MISSOURI, 63115
—
CO 1-0138

OCT 20 1964

October 20 1964

Dear Carl:

I am writing this letter in reply to yours concerning the Jefferson Bank Cases here which were are still involved. The Cases on writ of habeas corpus are still pending in the Federal District Court. The federal statutes call for a hearing on the writs within five days after they are issues. Now it has been more than six months and still the judges have not set the case for a hearing. All fourteen of the petitioners are still out on bond and will remain so at least until the district court rules against us. I would anticiapet that the court will set a hearing sometime within the near future and I am begining to write the brief for our case. However there are some points that you raised in your letter which I would like to have assistance on. They are as follows:

1. The issue of whether the circuit court had the right to convict the petitioners of criminal contempt instead of civil contempt. i.e. the right to know what one is charged with.

2. I would like to know whether or not you think the issue of the evidence issue would be a good thing to include. It is my opinion that the evidence is not conclusive beyond a reasonable doubt in several of the cases. Would the federal court consider this issue? If you think so let me know. I think it would be better to document this issue here in St. Louis since we know more about the facts than you do.

3. As to the issue of the Federal Courts enforcing hiring discrimination by issuing a Temporary Restraining Order, I have my doubts. The judge would not allow testiminy on this subject. However there are numerous offers of proof in the record. All objections were sustained by the judge when we attempted to submit evidence.

4. I believe that one of the most important points that needs briefing is the point concerning the juristiction of the court regarding who is covered by the restraining order. As you have seen 10 of the petitioners were not named in the restraining order and were also not members of CORE. In other words the Court would have you believe that any one who knew about the restraining order would be bound by it whether named in it or not. So in effect this order would bind the entire world. This seem to be to be clearly not the law. In my readin/ readings on the subject it is clearly indicated that Equity acts in personam and persons who are not parties to the suit cannot be bound by it. In some cases naturally it would be possible to bind a class of persons privided the individuals adequately represent the class however this is not the case here .

ROBERT B. CURTIS
ATTORNEY AT LAW
2847 UNION BLVD.
ST. LOUIS, MISSOURI, 63115
CO 1-0138

I would like to have this point briefed.

5. You asked the question in your letter concerning whether or not notice is required in a criminal contempt proceeding. Yes, it is required but my impression of the opinion of the St. Louis Court of Appeals is that the court held that notice can be given in any form. That is by word of mouth or by inference.

6. The petitioners apparently were represented by counsel at every stage of the contempt proceeding. However the question of the time given for preparation of defense is important. In the case of the second group that were tried. They were taken straight form the jail to trial. Without opportunity to prepare a defense. After two or three witnesses had testified the trial was adjourned until Monday. The St. Louis Court of Appeals said that this was a short time to prepare a defense but since the defendans later admitted their guilt they didnot need more time.

7. As for the question of the point about the jurisdiction of the US District Court and the question as to why we disn't appeal for the state supreme court to the US Supreme court. This has been settled when the case was sent back to the District court by the Eight Circuit Court of Appeals afterthe District court refused to consider the case.

8. Will you please send me the citation of the case of Cox v. Louisiana You indicaed that on the issue of the special prosecutor and his relationship to the bank might be of special interest. I should like to brief this point my self. You indicated that this was a Louisiana Supreme Court Case.

9. I would also apreciate your briefing the point of some of the petitioners i.e. the last three being business invitees.

10. And please brief the point about violation of the Fifth amendment when the special prosecutor for the bank took our depositions under the rules of civil proceedure and then later sent us notices that we were to be tried for criminal contempt. This point should be a sure winner

11. I have already done most of the work on the labor dispute point. I believe the possibilities are good on this point however we shall have to make some law on it. Also I am briefing the point about crule and unusual punishment and about the lenght of the sentences. I am using as a controlling case US v. Barnett, where the majority said that Barnett was not entitled to a jury trial for contempt but if tried without a jury he could not be punished for more

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ST. LOUIS, MISSOURI, 63115
CO 1-0138

than a petty offense. I believe that I have authority that more than 30 days and 300 fine is more than a petty offense, and that therefore we should have been given a jury trial.

12. A lso I will brief the point relating to the prejudice that due to the tremendous ampunt of adverse publicity the CORE got in it during before,during, and after the trial.

13. A lso the issue involved in NAACP v. Alabama I will brief myself.

14. You asked the question whether or not the conviction of some of the petitioners of breach of peace and tresspassing could be sustained in a fair trial. Yes, I think the charges against most of them could be sustained on those charges.

Your help in this case is greatly appreciated as I am the only one presently working on the case and there are so many possibilities the confront one while working on the case. I don't know when the case will be set for hearing, but I would think soon after the election in November.

Sincerely yours,

Robert

ROBERT B. CURTIS

PL 9-8800

November 6, 1964

Milton J. Schubin, Esq.
c/o Kaye, Scholer, Fierman, Hays
& Handler
425 Park Avenue
New York, N.Y.

Dear Mr. Schubin,

We are delivering herewith our file in the case of Jefferson Bank v. Curtis et al. Myra expects you to turn over the file to her.

I trust she will read the letter dated October 20th from Robert Curtis to me, which sets forth the questions he would like answered.

Please thank Myra for her help.

Sincerely,

Carl Rachlin
General Counsel

Enclosure/
CR:hdl

Jefferson Bank Case

ROBERT B. CURTIS
ATTORNEY AT LAW
2847 UNION BLVD.
ST. LOUIS, MISSOURI, 63115
CO 1-0138

FEB 15 1965

February 12,1965

Dear Carl:

I have sent to you this day under separate cover a copy of my argument on "labor dispute" preemption under the National Labor Relations Act pertaining to the Jefferson Bank Cases. Also enclosed is a revised copy of a statement of facts which I expcet to use on appeal of the writs of habeas corpus if necessary. As I previously informed you, one of the cases has already been ruled on by the US District Court. We are expceting a ruling on the other two cases very soon. The next step will be to appeal to the Eight Circuit Court of Appeals.

I expect to attend the CORE lawyers conference on the 19th of February and discuss this matter with you then. Also I have enclosed two additional copies of the brief on the labor question so that you can give them to persons you know that are experts on labor law. I also hope to discuss this with them. Since there is only one week until the conference this will have to be done immediately if the brief is to be read and digested.

Sincerely yours,

Robert B. Curtis

ROBERT B. CURTIS

ROBERT B. CURTIS
ATTORNEY AT LAW
2847 UNION BLVD.
ST. LOUIS, MISSOURI, 63115
—
CO 1-0138

MAR 18 1965

March 16, 1965

Dear Carl:

Please let me know if you have any suggestions on the brief on the Jefferson Bank cases, I sent to you about a month ago. I would be interested in your comments. ~~As~~ Also please send me the material from the CORE legal conference.

Sincerely yours,

ROBERT B. CURTIS

send him material

LAW OFFICES OF
McKISSICK & BURT
213½ WEST MAIN STREET
DURHAM, NORTH CAROLINA 27701

OFFICE 682-8106

F. B. McKISSICK
M. C. BURT, JR.

May 11, 1965

Mr. Robert B. Curtis
Attorney at Law
2847 Union Building
St. Louis, Missouri

COPY

In Re: ABSTENTION, ETC.: ISSUES ARISING FROM OCTOBER DEMONSTRATIONS.

Dear Mr. Curtis:

I have been asked by Mr. McKissick to respond to your letter of 22nd April, 1965, in which you asked him to comment on your brief in the above matter. The comments below are based on only a cursory acquaintance with the facts and are directed to your briefs on the law. I hope that my comments are able to shed some fresh light on your problems.

The facts of your case I take to be as follows: A T.R.O. was issued by a State Court against picketing at the place of business of an employer with whom CORE, of which some of the defendants are members, had been negotiating about hiring Negroes. The Order was issued at 1:55 p.m., and the prohibited activity occurred at 4:00 p.m. the same day. The defendants had had no notice of the issuance of the T.R.O. After arrest and other legal adventures, defendants were convicted of criminal contempt, from which judgment they now appeal. The attorney for the employer, procurer of the T.R.O., was appointed by the court as special prosecutor. Public opinion was aroused against the defendants, and some police harassment occurred. No bail was allowed pending appeal, but the Federal District Court did set bail after hearing a Habeas Corpus petition. The present appeal is from the conviction.

In the argument section of your brief the strongest thrust is that the T.R.O. was issued without jurisdiction because the dispute was a labor dispute within the jurisdiction of the N.L.R.B. Therefore, you argue, the "abstention" doctrine applies to preclude the State Court from enjoining activity connected with a labor dispute.

It seems to me that before the issue of the jurisdiction to issue the T.R.O. is reached, the prior question is whether or not, the T.R.O. having been issued, the defendants were justified in their conduct. This raises the issue of whether or not an illegally or unconstitutionally issued injunction must be obeyed until vacated. The law has clearly been, as I am sure you know, that whatever the defects in the procedure or substantive

basis leading to the issuance of an injunction, the obligation upon the enjoined individuals is to obey it until vacated. This position can be attacked in your case, it would appear on two grounds: First, that where a T.R.O. is so patently unconstitutional and so patently illegal, the citizen is justified in defying it. This is bad law, but the case is hard. You should discuss the irreparable injury in destruction of the movement which would have accrued to CORE, from obeying the T.R.O., and the lack of threatened injury to the procurer thereof. It is worth arguing also that (if this is the case), no bond was required before the T.R.O. was issued.

The second attack can be on the question of notice, that the opportunity for a hearing existed for quite a number of days prior to the scheduled activity.

I cannot say that I think you will win on either of these points. But I am afraid that if you lose on this issue, your argument as to abstention, NLRB jurisdiction, etc., will be nugatory.

As to your arguments under New Negro Alliance, I think that in the brief as presently organized the specific argument that New Negro Alliance applies to State Courts is not sufficiently separate and clear. This argument is, of course, one of the necessary steps to a conclusion in your favor.

You nowhere argue the illegality of the issuance of the injunction on First Amendment grounds. I take it that this omission is in response to the Hughes case, but I think that you should probably make the argument anyway.

Your most promising grounds are, it seems to me, Due Process arguments on the conduct of the trial, which are not made in the brief which you sent to us. You are aware of them, I am sure, since the facts upon which they would be based are set out in specific in your Statement of Facts. Lack of counsel or lack of time for preparation by counsel, prejudicial prosecution, and inflammatory atmosphere appear to be the most prominent.

Out of these Due Process complaints you should be able to get at least a new trial. If so, I should then suggest removing the case to the Federal Courts, which you would appear to be entitled to do "before trial" on a retrial. See Amsterdam, Defensive Transfer of Civil Rights Litigation from State to Federal Courts, pub. NAACP Legal Defense Fund, 1964, page 118.

There is one rather far-out argument which could be made, and which is implicit in some parts of your argument: that refusal to apply the abstention doctrine in the cases of racial labor disputes, when it is applied as of course where no racial factor is involved, it a denial of Equal Protection

under the Fourteenth Amendment and also under either the 1875 or the 1964 Civil Rights Bill. You might also consider suing for money damages under the 1875 law, perhaps on behalf of the three minor children who were roughed up by the police. The grounds would be deprivation of a constitutional right to picket, in conspiracy with the bank, and resulting physical and psychological damages.

With regard to the additional arguments which you sent us on 25th April, 1965, I shall only note the irony of your coming up on the opposite side of U. S. v. Barnett. I do not think you will win on that one, although the second argument, on privity, appears sound.

I hope that these comments will be of some help to you. I wish to you the very best of luck with these most troublesome civil disobedience cases.

With very kind regards, I am

Yours very truly,

MCKISSICK & BURT

Carol Ruth Silver

CRS:ls

cc: Mr. Carl Rachlin
General Counsel
CORE
38 Park Row
New York 38, New York

F. B. McKissick, Esq.

Mercantile Bank Co.

May 15, 1965

Robert B. Curtis, Esq.
2847 Union Boulevard
St. Louis, Missouri 63117

Dear Bob:

You have sent two parts of a brief. One relates to the right of jury trial in contempt proceedings, and the second concerns itself with the question of non-parties being held in contempt of an injunction previously issued.

As to the issue of jury trial, I think your discussion on this point is well taken. Barnett is wrongly decided and I think you may just barely have the case to make the Supreme Court see the error of its ways. The penalties meted out in your case are so horrendous that they make a farce of the majority opinion in Barnett. Everything Goldberg said in his dissent takes on added relevance. Accordingly, my suggestion to you is that this part of the brief should be even more firmly discussed in terms of the incorrectness of Barnett. After all, this is a criminal proceeding and not a civil contempt. While minor matters may constitutionally be decided without a jury, as I think Clawans states, it is obvious that the penalties here are far beyond the presumptive limits discussed in Clawans. Since criminal contempt concerns itself with punishment for previous violation of a court order, and unlike civil contempt is not primarily designed to prevent future violations, determination of the violation, if any, as in all criminal cases, should be by a jury. In a certain sense, the judge himself, is prejudiced since the issue concerns, normally, his own order.

Implicit in this is an argument which ought to be raised with a fair degree of success. There is some tendency in the courts recently to indicate that where an order is in violation of the Constitution, there may not be the obligation to obey it that had been thought to exist at the time of the United Mine Workers case. .Of course, you have a serious problem in view of some of the difficult facts in your case to convince a court that the initial order was unconstitutional but I think the effort is worth making.

The parts you sent me do not include your major arguments on due process. The ineptitude of the court, the confusing way in which civil and criminal contempt are handled almost in one proceeding, the failure to advise the defendants clearly of the charges -- these

all make for a major due process argument which I think should be compelling. If you have not already done so, in your brief I would stress fact after fact which shows the outrageous way in which the trial judge handled this case. Failure of due process is in large part a factual issue, and the fact should be stressed in outline form in as much detail as is possible for the purpose of showing the impossibility of having had a fair trial, and that the judge, as a result of his inability, based upon the description you have previously made of his conduct, to understand the various issues, has deprived you of constitutional due process.

I wish I had more faith than I do in the privity argument. Obviously if there is not a shred of proof that not only were the persons convicted of contempt not parties to the proceeding but were not even aware of the order, your position would be basically correct. In a certain sense, Point 2 of your argument on this subject answers Point 1. If the second group of defendants acted with knowledge and forethought of the contempt order, the fact that their actions were apparently independent of the first group and at different times would probably not protect them. As you know, a conspiracy does not need to be proven by a showing of a meeting and a written agreement. On the other hand, if the parties were not given a chance to meet the argument at the hearing so that they were not able to show their complete independence and their lack of knowledge of the order, or their reasonable belief the order did not apply to them, you do have another failure of due process aggument which should be stressed.

I think your case is a good one and as you know we will support you to the absolute limit of our ability. Merely because some arguments to me seem weaker than others is not reason, of course, not to make them. As I have said above, however, the arguments I would stress are the incorrectness of Barnett and the numerous instances individually and in a totality of the failure of due process. At the time Barnett was decided no penalties hung over the head of Barnett and the Court was in a sense deciding an issue which the Fifth Circuit could not agree upon and was merely making an interim procedural remedy. Goldberg's dissent would have taken on much greater significance if the Fifth Circuit had decided in favor of no jury and had sentenced Barnett to a year or more for his violation. Remember only one judge is needed to reverse Barnett or distinguish it.

Not many years ago in the Jehovah's Witnesses cases within a period of a year or two, the Supreme Court reversed an 8-1 decision with Stone the sole dissenter into a substantial majority on a major constitutional right. The Court saw its error in its initial decision there and was not afraid to reverse itself. I do not think this Court will refuse to see its error in Barnett, and accordingly there is some reason to hope it will reverse itself based upon flesh and blood facts and not an abstract proposition as the Court saw in Barnett.

It might be useful to make a full scale attack on Hughes. Hughes itself was decided because the demand was for a 50% quota. I think an argument can be made that a request for a few jobs for Negroes such as you made is not in the same category as a demand for 50% of the employees. In

one case, it means displacing white persons and means denying future employment; in the other (Jefferson Bank), the request by the CORE Chapter could have been fulfilled in terms of the Constitution, the normal turnover being of such nature that probably nobody would have been deprived of an opportunity to work. Of course, this was not true in Hughes. Thus the small number sought to be employed makes for a qualitative difference from the demand in Hughes. Unartful phrasing in making a request sound like a sledgehammer should not be the basis for the bank's refusing the request and obtaining the injunction. Obviously the number sought here in no wise even approached an approximation of the ratio of Negroes in St. Louis whereas in the Hughes cases 50% allegedly represented an approximation of the customers of the store and, of course, far exceeded the ratio in the population of Negroes in the community.

Best regards. Let me hear from you.

Sincerely,

Carl Rachlin
General Counsel

CR:JG

cc: Carol Silver

MSS
546

SEDFRE

JOHNSON, MARGARET M. et al vs. JACKSON PARISH SCHOOL BOARD, 1965 - 1967
(SCHOOL DESEGREGATION CASE)

Box 37
Folder 34

State Historical Society of Wisconsin

Please Retain Original Order

Carl Rachlin

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

MONROE DIVISION

ARMEY JOHNSON and SANDERS THOMAS, Plaintiffs	:	CIVIL ACTION
vs.	:	NO. _____
JACKSON PARISH SCHOOL BOARD, A Corporation, and DR. A. A. MEREDITH, President and J. D. KOONCE, Superintendent, Defendants.	:	

COMPLAINT

1. Jurisdiction

Jurisdiction is based on the due process and equal protection clause of the Fourteenth Amendment to the United States Constitution, Title 28 U.S. Code Section 1981, 1983, 1985, 1986, 1988.

2. Nature of Cause of Action

This is a class action on behalf of plaintiffs and all other Negroes similarly situated, for damages and for an Ex Parte Temporary Restraining Order, Preliminary and Final Injunctions prohibiting the furtherance of a proposed School Board Bond Issue until defendants file with this court a fair and equitable plan for desegregation of the said school district, and for the maintenance of said school system without regard to race, color, creed or national origin, which plan shall be caused to go into effect no later than the opening of the next session of said school district. All of the other persons constitute a class too numerous to bring before the court. There are common questions of law and fact affecting all members of the class, and common relief is sought.

3. Plaintiffs

Both plaintiffs are adult males, Negroes, citizens of the United States, and the State of Louisiana and are domiciled in the Parish of Jackson. Plaintiffs are registered voters, taxpayers and fathers of children attending the Public Schools of Jackson Parish.

4. Defendants

Defendant, Jackson Parish School Board is a Public Body Corporate organized and existing under the laws of the State of Louisiana, Dr. A. A. Meredith is the President of said School Board and J. D. Koonce is the Superintendent of Jackson Parish Schools. The School Board herein is charged by the laws of the State of Louisiana with the duty of operating systems of free public schools in said parish and they are presently so doing. The said school board is sued in its corporate capacity and the President and Superintendent are sued in their official capacity.

5. Facts

Defendants, acting under color of the laws of Louisiana, have pursued for some time and are presently pursuing a policy, practice, custom and usage of operating the public school systems in Jackson Parish, Louisiana on a racially segregated basis. Defendants maintain and operate compulsory biracial school systems and defendants make initial assignments of students to the public schools under their control on the grounds of race and color. Principals, teachers and other professional personnel under defendants' jurisdiction are likewise assigned to the schools on the basis of race and color. Students initially assigned to elementary schools designated as "white" are thereafter assigned solely to high schools similarly designated. Students assigned initially to

elementary schools denominated as Negro, are thereafter assigned solely to high schools similarly designated. In no case are the assignments of either students, teachers, principals or other professional personnel of the white race made to schools designated as Negro nor are assignments of students, teachers, principals or other personnel of the Negro race assigned to schools designated as white. Defendants also discriminate against plaintiffs herein and the members of the class represented by them in school construction, the formulation of budgets and the disbursement of school funds. Specifically, defendants construct elementary and high schools with reference to the maintenance of compulsory biracial school systems. Defendants herein also limit participation in extracurricular activities in the schools to one or the other race, separately.

6. None of the schools in Jackson Parish are integrated. There are 8 white schools with 2,378 white students in grades 1 to 8, and 866 white students in grades 9 to 12. There are 144 white teachers employed in these schools.

7. There are 4 Negro schools with 1,181 Negro students in grades 1 to 8 and 488 Negro students in grades 9 to 12. There are 74 Negro teachers employed in these schools.

8. On March 30, 1965 a parish wide school bond issue of $800,000.00 was voted upon and approved by the property owners of said parish. Bids on the bonds and [illegible] to be submitted on June 3, 1965, [illegible] and made part hereof is a [illegible] said bonds. The bonds are to be issued for the purpose of erecting and/or improving school buildings, school gymnasiums and other related facilities.

9. Plaintiffs apprehend and fear that the funds to be secured by the bond issue will be used to perpetuate the discriminatory segregationist practices of the past.

10. Plaintiffs allege that the Jackson Parish School Board has an affirmative obligation and duty under the Constitution and laws of the United States and decisions thereunder to voluntarily desegregate said schools.

11. Plaintiffs allege that the failure of this school board or any school board to so voluntarily desegregate their schools is a denial of rights guaranteed under the due process and equal protection clauses of the Fourteenth Amendment to the U. S. Constitution and also a violation of 42 U.S.C. 1981, 1983, 1985(3), and 1986.

12. Plaintiffs and the members of the class which they represent are irreparably injured by the acts of defendants complained of herein. The continued operation by defendants of compulsory biracial school systems in the Parish of Jackson, Louisiana including the assignment of pupils, teachers, principals and other administrative personnel on the ground of race, the operation of the budgets for the schools on the basis of race, the construction of schools on the basis of race, and the programming and planning of extracurricular activities on the basis of race violate the rights, of the plaintiffs and the members of the class, secured to them by the equal protection clause of the Fourteenth Amendment to the Constitution of the United States and the United States Laws and decisions. This irreparable injury to plaintiffs and their class will continue unless and until defendants are enjoined by this Court. Any other relief to which plaintiffs and those similarly situated might be remitted would be

attended by uncertainty and delay, would involve a multiplicity of suits, cause further irreparable injury and occasion vexation and inconvenience and deny to plaintiffs and those similarly situated substantial relief.

WHEREFORE, plaintiffs pray that the court sign an Ex Parte Temporary Restraining Order enjoining defendants, their agents, representatives, employees, successors and all persons in active concert with them from:

1.) Continuing to operate compulsory biracial school systems in the Parish of Jackson.

2.) Making initial assignments of pupils to the public schools of the parish based on race.

3.) Assigning teachers, principals, and other professional personnel to the public schools on the basis of race

4.) Approving employment contracts, budgets, and disbursing funds on the basis of race.

5.) Constructing elementary and high schools in the Parish on the basis of dual attendance areas based on race.

6.) Programming and supporting extracurricular activities which are limited solely to one or the other of the races.

7.) Continuing to make any other distinctions in the operation of the Parish schools which are based solely on race.

8.) Advertising or soliciting for bids, accepting bids, accepting funds, distributing funds, or doing or having done by others any act, furthering the proposed school bond issue approved by the voters on March 30, 1965.

Said Temporary Restraining Order to remain in effect until it expires or until defendants file with the court a fair and

equitable plan for desegregation of said school district and maintenance of said desegregated school district which plan shall go into effect no later than the opening of the next school session.

Plaintiffs further pray that the court advance this cause on the docket and order a speedy hearing of this action according to law and after such hearing that this Honorable Court enter Preliminary and Permanent Injunctions identical to that prayed for in the Temporary Restraining Order.

Plaintiffs further pray for a judgment against defendants in the sum of $15,000.00 for their damages plus attorneys fees, expenses and costs.

Plaintiffs further pray that if this court directs defendants to submit desegregation plans that the court will retain jurisdiction of this case pending court approval and full and complete implementation of defendants plans.

Plaintiffs further pray that this court will grant such other, further, additional or alternative relief as may appear equitable, just, and proper.

RESPECTFULLY SUBMITTED:

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA
523-5197

BY: Nils R Douglas

OF COUNSEL:
CARL RACHLIN
38 PARK ROW
NEW YORK 38, NEW YORK
ALVIN J. BRONSTEIN
603 N. FARISH STREET
JACKSON, MISSISSIPPI

STATE OF LOUISIANA

PARISH OF JACKSON

BEFORE ME, the undersigned authority personally came and appeared:

SANDERS THOMAS

who after first being duly sworn did depose and say that he is a plaintiff in the above and foregoing complaint, that he has read the same and that all the allegations therein contained are true and correct to the best of my information and belief.

Sanders Thomas

SANDERS THOMAS

SWORN TO AND SUBSCRIBED BEFORE ME THIS 27 DAY OF MAY, 1965.

Ernest N. Jones Jr.

NOTARY PUBLIC

My commission expires June 1, 1966

AFFIDAVIT IN SUPPORT OF PRAYER FOR TEMPORARY RESTRAINING ORDER

STATE OF LOUISIANA

PARISH OF JACKSON

BEFORE ME, the undersigned authority personally came and appeared:

SANDERS THOMAS

who after first being duly sworn did depose and say that he is a Negro citizen of the United States and State of Louisiana, domiciled in the Parish of Jackson; that he is a homeowner, taxpayer and father of a child attending Jackson Parish Public Schools; that all public schools in the Parish are and have been for years operated on a segregated and discriminatory basis; that an $800,000.00 School Bond Issue was approved by the voters of the Parish on March 30, 1965 and that sealed bids are to be made on June 3, 1965; that affiant apprehends and fears that these funds will be used to perpetuate the unlawful, and unconstitutional Bi-Racial school system and that affiant will suffer immediate irreparable harm if the sale of these bonds is not terminated until the school board files a plan of desegregation for the next school session.

Sanders Thomas
SANDERS THOMAS

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 27 DAY
OF MAY, 1965.

Ernest N. Francis Jr.
NOTARY PUBLIC
Com. expires June 1, 1966

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

MONROE DIVISION

MARGARETT M. JOHNSON, LONNIE E. JOHNSON, GLENDA G. JOHNSON, and KENNETH L. JOHNSON by their father and next friend ARMEY JOHNSON and CALVIN LEE MARA THOMAS by his father and next friend SANDERS THOMAS and all Negro students and parents similarly situated,

Plaintiffs

vs.

JACKSON PARISH SCHOOL BOARD, A Corporation, and DR. A. A. MEREDITH, President and J. D. KOONCE, Superintendent,

Defendants

CIVIL ACTION NO. 11130

* *

INTERROGATORIES

SIRS:

Please take notice under Rule 33 of the Federal Rules of Civil Procedure that plaintiffs require that defendants answer separately and fully in writing under oath within 18 days of the mailing hereof the following interrogatories concerning matters relevant to the subject matter involved in this action:

1. Of what State of the United States or of what Foreign States are the plaintiffs alleged to be citizens or subjects respectively?

2. Specify each and every administrative remedy available to plaintiffs as alleged in the Second Defense, and provide with respect to each all statutory references thereto and authorization therefor; and provide copies of any administrative rules and regulations if any with respect thereto and copies of any blank forms provided or prepared by the administrative body concerned.

3. When were the bonds sold as alleged in Paragraph II of the Answer?

4. To whom were such bonds sold?

5. If such bonds were sold pursuant to a written bid provide a copy of such successful bid.

6. Provide copies of each and every bid received for such bonds.

7. Provide a copy of the official prospectus for such bonds.

8. Provide a copy of the terms of offering such bonds.

9. When and where were such bonds delivered pursuant to the sale alleged?

10. How much was received by defendants upon delivery of said bonds? When were such funds received, where were such funds received? Set forth all items of expense distributed from the gross amount received for such bonds.

11. As to each such distribution state the date, amount, payee and purpose thereof.

12. How much of such fund remain on hand?

13. Where is such remaining fund, if any?

14. Have the defendants adopted a plan for the fair and equitable desegregation of their school district? If so, provide a copy of each and every such plan together with the minutes of the meeting of said adoption specifying the date of said meeting, place, names of persons attending and the place or places, if anywhere, any such plan has been filed.

15. Provide a copy of every resolution adopted and statements made by Defendant School Board with respect to the bond issue of June 3, 1965.

16. Did Foley and Judell, Special Bond Counsel, or any attorney or Attorneys issue any written opinion with respect to said Bond Issue? If so, provide a copy of each such opinion.

17. In any school subject to the jurisdiction of Defendants is any Negro child presently assigned to a predominantly white school or is any white child assigned to a predominantly Negro school? If so, provide the names of such children, their classes, schools and the dates of such assignment.

18. Provide copies of all rules, regulations, or forms pertaining to the enrollment, assignment and transfer of students and the employment, assignment and transfer of Principals, Teachers and other Professional personnel.

19. Describe the type of school facilities to be purchased as alleged in Paragraph VIII of the Answer, including copies of budgets, purpose for each expenditures together with a statement of the amount or amounts spent or contracted for, copies of plans, specifications, invitations to bid, contracts, requisitions or other orders for the payment of money.

of Defendant Board for the period including the school year which terminated in the Spring of 1965.

21. Specify in detail what Defendants have done to fulfill their obligation and duties to operate schools in accordance with the Laws of the United States as alleged in Paragraph X and XI of the Answer.

22. Specify what action defendants have taken to comply with Section 1981 and following of Title 42 of the United States Code as alleged in X and XI of the Answer.

23. Describe in detail the disruption feared by Defendants as alleged in XIII of the Answer?

24. At what age are children first eligible for admittance to Defendants' Schools?

25. How are parents notified by Defendants of the opportunity and requirements of the children to attend the Schools of Defendants? Provide copies of all forms of admittance employed in any schools and in any grades by defendants.

26. Provide a list of all schools operated by defendants showing as to each school at the present time:

(1) Name and address

(2) Grades taught

(3) Number and average size, in square feet, of classrooms

(4) Description of other facilities, including size in square feet.

(5) Date or dates of construction

(6) Cost of construction

(7) Number of white pupils enrolled

(8) Number of Negro pupils enrolled

(9) As to each high school, the number of pupils who had previously attended each elementary school in the Parish.

(10) Number of white teachers assigned

(11) Number of Negro teachers assigned

(12) Whether principal is white or Negro

(13) Number and job classification of other white professional personnel

(14) Number and job classification of other Negro professional personnel

(15) Average salary of white teachers

(16) Average Salary of Negro teachers

(17) Salary of principal

(18) Average salary of other white professional personnel

(19) Average salary of other Negro professional personnel

(20) Operating budget for the school year 1965-66

(21) Capital budget for the school year 1965-66

27. As to each school in which 95% or more of the pupils are white, provide a list showing:

(1) The names and addresses of any Negro pupils enrolled in the school at any time since January 1, 1955, and the period of enrollment of each

(2) The names and addresses of any Negro teachers, principals and other professional personnel assigned to that school at any time since January 1, 1955, and the period of assignment of each.

28. As to each school in which 95% or more of the pupils enrolled/are Negro, provide a list showing:

(1) The names and addresses of any white pupils enrolled in the school at any time since January 1, 1955, and the period of enrollment of each

(2) The names and addresses of any white teachers, principlas and other professional personnel assigned to that school at any time since January 1, 1955, and the period of assignment of each

29. Provide a list of all professional employees of the School Board at the present time, other than those assigned to specific schools, showing as to each:

(1) Name

(2) Whether white or Negro

(3) Salary; and

(4) General description of responsibilities and duties.

30. Provide maps showing the attendance area of each school operated by the School Board for each year from the school year 1955-56 to and including the school year 1965-66.

31. Provide copies of all rules, regulations, orders, policies practices and statements of the School Board from January 1, 1955 to the present that relate to any of the following:

(1) The enrollment, assignment, and transfer of pupils;

(2) The employment, assignment, and transfer of principals, teachers, and other professional personnel;

(3) The promotion of pupils from elementary schools to high schools;

(4) The increase of taxes on Parish property subject to taxation required for payments of principal and interest on the bonds;

(5) The application or proposed application of funds, showing the amounts applied or to be applied for construction, additions, repairs, and renovation of each school operated by the School Board.

32. Provide a copy of the operating budget and of the capital budget adopted by the School Board for each year from the school year 1955-56 to and including the school year 1965-66?

33. Provide a copy of each financial report of the School Board for each year from the school year 1955-56 to and including the school year 1965-66?

34. As to the proposed bond issue voted upon in Jackson Parish on March 30, 1965; provide:

(1) A copy of every resolution adopted and statements made by the School Board relating to the bond issue;

(2) A copy of the invitation for bids;

(3) A copy of each bid received;

(4) Copies of all correspondence, communications, contracts, proposed contracts, and other documents in the possession of the School Board in respect of the bonds and the bids.

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA
523-5197
ATTORNEYS FOR PLAINTIFFS

BY:_____

OF COUNSEL:
CARL RACHLIN
38 PARK ROW
NEW YORK 38, NEW YORK

ALVIN J. BRONSTEIN
603 N. PARISH STREET
JACKSON, MISSISSIPPI

C E R T I F I C A T E

I hereby certify that a copy of the above Interrogatories has been served on the attorney for the defendants by placing same in U. S. Mail addressed to them with sufficient postage thereto annexed.

_____
NILS R. DOUGLAS

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

MONROE DIVISION

MARGARETT M. JOHNSON, LONNIE E. JOHNSON, GLENDA G. JOHNSON, and KENNETH L. JOHNSON by their father and next friend ARMEY JOHNSON and CALVIN LEE MARA THOMAS by his father and next friend SANDERS THOMAS and all Negro students and parents similarly situated,

Plaintiffs

vs.

JACKSON PARISH SCHOOL BOARD, A Corporation, and DR. A. A. MEREDITH, President and J. D. KOONCE, Superintendent,

Defendants

CIVIL ACTION NO. 11130

* *

REQUEST FOR ADMISSIONS
UNDER RULE 36

Plaintiffs request defendants within 13 days after mailing of this request to make the following admissions for the purpose of this action only and subject to all pertinent objectives to admissability which may be interposedat the trial:

1. That each of the following statements are true.

   a. Plaintiff Margarett M. Johnson, is an infant.
   b. Plaintiff Lonnie E. Johnson is an infant.
   c. Plaintiff Glenda G. Johnson is an infant.
   d. Plaintiff Kenneth L. Johnson is an infant.
   e. Plaintiff Calvin Lee Mara Thomas is an infant.
   f. Plaintiff Armey Johnson is an adult.
   g. Plaintiff Sanders Thomas is an adult.
   h. All the foregoing plaintiffs are Negro.
   i. All the foregoing plaintiffs are citizens of the United States.
   j. All the foregoing plaintiffs are residents of the State of Louisiana.
   k. All the foregoing plaintiffs are domiciled in the Parish of Jackson.
   l. Armey Johnson is a registered voter of Jackson Parish.
   m. Sanders Thomas is a registered voter in Jackson Parish.

n. Armey Johnson is a taxpayer of Jackson Parish.

o. Sanders Thomas is a taxpayer of Jackson Parish.

p. Armey Johnson is the father of the four infants first named above.

q. Sanders Thomas is the father of Calvin Lee Mara Thomas.

r. The infant plaintiffs are students in the free public schools of Jackson Parish, Louisiana.

s. There are in the free public schools of Jackson Parish, Louisiana other infant Negro students.

t. Defendant Jackson Parish School Board of the Parish of Jackson, Louisiana (hereinafter referred to as Board), is a public corporate body.

u. Defendant Board is the governing authority of Consolidated School District No. 1 of the Parish of Jackson, State of Louisiana.

v. Dr. A. A. Meredith, is the president of Defendant Board.

w. Defendant J. D. Koonce, is the Superintendent of Schools and Secretary of Defendant Board.

x. Defendant Board is charged by the laws of the State of Louisiana with the duty of operating the system of free public schools in the Parish of Jackson, Louisiana.

y. Defendant Board is presently operating such system.

z. No Negro child has ever been a student in the same school simultaneously with a white child or children in any school operated by Defendant Board or subject to its jurisdiction.

aa. During the school semester which terminated in the Spring of 1965 no Negro child was a student simultaneously in any class in which a white child or children were students in any school operated by Defendant Board or subject to its jurisdiction.

bb. No Negro Teacher has ever taught a class in which there was a white child or children in any school operated by or subject to the jurisdiction of Defendant Board.

cc. During the school semester which ended in the Spring of 1965 no Negro teacher taught a white child or children in any school operated by or subject to the jurisdiction of Defendant Board.

dd. The system of schools operated by Defendants consist of several schools located at public places within the Parish. Some of the said schools have only white pupils.

ee. Some of said schools have only Negro pupils.

ff. No Negro teacher is employed to teach in any of the schools where only white children attend.

gg. Students are initially assigned to a particular school by Defendant Board based upon the race or color of the student concerned.

hh. Principals, teachers and other professional personnel are assigned to schools within the jurisdiction of Defendants on the basis of race or color among other considerations.

ii. Certain schools under Defendants' jurisdiction are designated "White."

jj. Certain schools under Defendants' jurisdiction are designated "Negro."

kk. Students initially assigned to elementary schools designated as "White" are thereafter assigned to high schools similarly designated.

ll. Students initially assigned to elementary schools designated as "Negro" are thereafter assigned to high schools similarly designated.

mm. In no case are assignments of students, teachers, principals or other professional personnel of the white race made to schools designated as "Negro."

nn. In no case are assignments of students, teachers, principals or other professional personnel of the Negro race made to schools designated as "White."

oo. Defendants operate a program of extracurricular activities as part of or in association with the schools operated by them.

pp. Such extracurricular activities are operated separately for Negro and white.

qq. In Jackson Parish there are eight white schools and four Negro schools.

rr. Said white schools have an enrollment of 1,756 students in grades first thru eighth and all of such students are white.

ss. Said white schools have an enrollment of 876 students in grades ninth thru twelfth and all of said students are white.

tt. Said white schools employ 132 teachers all of whom are white.

uu. Said four Negro schools have an enrollment of 1,190 students in grades first thru eighth and allof such students are Negro.

vv. Said Negro schools have an enrollment of 490 students in grades ninth thru twelfth and all of said students are Negro.

ww. Said four Negro Schools employ 76 teachers all of whom are Negro.

xx. The improved school facilities to be built as alleged in Paragraph VIII of the Answer are to be separately designated Negro and white.

yy. Defendants have adopted no plan for desegregation or integration of the teachers, principals and other professional personnel.

zz. Defendants have adopted no plan for the desegregation or integration of the schools subject to their jurisdiction.

aaa. The budget adopted from time to time by Defendant Board have contained separate construction for Negro and white facilities.

bbb. The most recent budget adopted by Defendant Board makes allotments for Negro and white facilities and operation.

ccc. The case of Brown against the Board of Education, 347 U.S. 483, 349 U. S. 274, has neither been overruled nor reversed.

ddd. The Defendants have taken no action to conform the operation of the schools subject to their jurisdiction to the requirements set out by the Supreme Court of the United States in Brown against Bord and subsequent decisions.

eee. The forms of applications for admission to the schools under the jurisdiction of Defendants are different for Negro and white.

fff. The forms of applications for admission to the schools under the jurisdiction of Defendants provide for inquiry as to whether the applicant is Negro or white.

ggg. The forms of registration of students employed in the schools subject to the jurisdiction of Defendants are designed as to make the designation of the race of prospective students known to the administrative personnel, of such schools.

hhh.

ROBERT F. COLLINS
MILS R. DOUGLAS
LOLIS E. ELIE
2211 ERYADES STREET
NEW ORLEANS, LOUISIANA
523-5197

ATTORNEYS FOR PLAINTIFFS

BY:_____

OF COUNSEL:
CARL RACHLIN
38 PARK ROW
NEW YORK 38, NEW YORK

ALVIS J. ROCHESTEIN
603 N. FARISH STREET
JACKSON, MISSISSIPPI

CERTIFICATE

I hereby certify that a copy of the above Request for Admissions Under Rule 36 has been served on the attorney for the defendants by placing same in U. S. Mail addressed to them with sufficient postage hereto annexed.

_____
MILS R. DOUGLAS

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

MONROE DIVISION

MARGARETT M. JOHNSON, LONNIE E. JOHNSON, GLENDA G. JOHNSON, and KENNETH L. JOHNSON by their father and next friend ARMEY JOHNSON and CALVIN LEE MARA THOMAS by his father and next friend SANDERS THOMAS and all Negro students and parents similarly situated,

Plaintiffs

vs.

CIVIL ACTION NO. 11130

JACKSON PARISH SCHOOL BOARD, A Corporation, and DR. A. A. MEREDITH, President and J. D. KOONCE, Superintendent,

Defendants

TO: J. D. KOONCE, Superintendent Jackson Parish School Board

* *

SUBPOENA DUCES TECUM

YOU ARE HEREBY COMMANDED to appear in the United States District Court for the Western District of Louisiana, Monroe Division in the city of Monroe, Louisiana on the 27th day of July, 1965 at o'clock m. to testify on behalf of plaintiffs in the above entitled action and bring with you

a. A list of all public schools operated by the School Board, showing as to each school at the present time:

(1) Name and address
(2) Grades taught
(3) Number and average size, in square feet, of classrooms
(4) Description of other facilities, including size in square feet.
(5) Date or dates of construction
(6) Cost of construction
(7) Number of white pupils enrolled
(8) Number of Negro pupils enrolled
(9) As to each high school, the number of pupils who had previously attended each elementary school in the Parish
(10) Number of white teachers assigned
(11) Number of Negro teachers assigned
(12) Whether principal is white or Negro
(13) Number and job classification of other white professional personnel
(14) Number and job classification of other Negro professional personnel
(15) Average salary of white teachers
(16) Average salary of Negro teacher
(17) Salary of principal
(18) Average salary of other white professional personnel
(19) Average salary of other Negro professional personnel
(20) Operating budget for the school year 1965-66
(21) Capital budget for the school year 1965-66

b. As to each school in which 95% or more of the pupils enrolled are white, prove a list showing:

(1) The names and addresses of any Negro pupils enrolled in the school at any time since January 1, 1965, and the period of enrollment of each

(2) The names and addresses of any Negro teachers, principals and other professional personnel assigned to that school at any time since January 1, 1955, and the period of assignment of each.

c. As to each school in which 95% or more of the pupils enrolled are Negro, provide a list showing:

(1) The names and addresses of any white pupils enrolled in the school at any time since January 1, 1955, and the period of enrollment of each

(2) The names and addresses of any white teachers, principals and other professional personnel assigned to that school at any time since January 1, 1955, and the period of assignment of each

d. Provide a list of all professional employees of the School Board at the present time, other than those assigned to specific schools, showing as to each:

(1) Name

(2) Whether white or Negro

(3) Salary; and

(4) General description of responsibilities and duties.

e. Provide maps showing the attendance area of each school operated by the School Board for each year from the school year 1965-66 to and including the school year 1965-66.

f. Provide copies of all rules, regulations, orders, policies, practices and statements of the School Board from January 1, 1955 to the present that relate to any of the following:

(1) The enrollment, assignment, and transfer of pupils;

(2) The employment, assignment, and transfer of principals, teachers, and other professional personnel;

(3) The promotion of pupils from elementary schools to high schools;

(4) The extra-curricular activities of pupils and professional personnel; and

(5) The segregation and desegregation of the public schools in the Parish of Jackson

g. Provide a statement showing, as to each school bond issue in Jackson Parish since January 1, 1955, and as to the proposed bond issue voted upon in Jackson Parish on March 30, 1965:

(1) The principal amount of the bonds;

(2) The rate of interest;

(3) The dates and amounts of repayment of principal;

(2) The names and addresses of any Negro teachers, principals and other professional personnel assigned to that school at any time since January 1, 1955, and the period of assignment of each.

c. As to each school in which 95% or more of the pupils enrolled are Negro, provide a list showing:

(1) The names and addresses of any white pupils enrolled in the school at any time since January 1, 1955, and the period of enrollment of each

(2) The names and addresses of any white teachers, principals and other professional personnel assigned to that school at any time since January 1, 1955, and the period of assignment of each

d. Provide a list of all professional employees of the School Board at the present time, other than those assigned to specific schools, showing as to each:

(1) Name

(2) Whether white or Negro

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(4) General description of responsibilities and duties.

e. Provide maps showing the attendance area of each school operated by the School Board for each year from the school year 1965-66 to and including the school year 1965-66.

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(1) The enrollment, assignment, and transfer of pupils;

(2) The employment, assignment, and transfer of principals, teachers, and other professional personnel;

(3) The promotion of pupils from elementary schools to high schools;

(4) The extra-curricular activities of pupils and professional personnel; and

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(1) The principal amount of the bonds;

(2) The rate of interest;

(3) The dates and amounts of repayment of principal;

(4) The increase of taxes on Parish property subject to taxation required for payments of principal and interests on the bonds;

(5) The application or proposed application of funds, showing the amounts applied or to be applied for construction, additions, repairs, and renovation of each school operated by the School Board.

h. Provide a copy of the operating budget and of the capital budget adopted by the School Board for each year from the school year 1955-56 to and including the school year 1965-66.

i. Provide a copy of each financial report of the School Board for each year from the school year 1955-56 to and including the school year 1964-65.

j. As to the proposed bond issue voted upon in Jackson Parish on March 30, 1965; provide:

(1) A copy of every resolution adopted and statement made by the School Board relating to the bond issue;

(2) A copy of the invitation for bids;

(3) A copy of each bid received;

(4) Copies of all correspondence, communications, contracts, proposed contracts, and other documents in the possession of the School Board in respect of the bonds and the bids.

----------,19------.

---------- ----------,
Attorney for Clerk

---------- BY----------,
Address Deputy Clerk

RETURN ON SERVICE

Received this subpoena at On
and on at
served it on the within named
by delivering a copy to h and tendering to h the fee for one day's attendance and the mileage allowed by law.

Dated:

----------,19-------- ----------,
Service Fees By ----------.

Travel ----------$
Services ----------

Total ----------$

Subscribed and sworn to before me, a this
day of ,19.

IN THE UNITED STATES DISTRICT COURT FOR

THE WESTERN DISTRICT OF LOUISIANA

MONROE DIVISION

MARGARET M. JOHNSON,
LONNIE E. JOHNSON, GLENDA
G. JOHNSON, and KENNETH L.
JOHNSON by their father and
next friend ARMEY JOHNSON;
and CALVIN LEE MARA THOMAS,
by his father and next friend
SANDERS THOMAS, and all
Negro students and parents
similarly situated

vs.

CIVIL ACTION NO. 11,130

JACKSON PARISH SCHOOL BOARD,
a Corporation, and
DR. A. A. MEREDITH, President,
and J. D. KOONCE, Superintendent.

D E C R E E

Pursuant to the pleadings, the law and the evidence:

1. It is ORDERED, ADJUDGED and DECREED that the Jackson Parish School Board, its President, Dr. A. A. Meredith, its Superintendent, J. D. Koonce, their agents, employees, attorneys, successors in office and all those acting in concert with them are hereby permanently enjoined and restrained from:

a. Continuing to refuse to admit minor plaintiffs to the schools which they would attend if they were white;

b. Continuing to assign students to schools with regard to race or color;

c. Continuing to operate a compulsory bi-racial school system in Jackson Parish, Louisiana;

d. Continuing to maintain dual school zone or attendance area lines based on race or color;

e. Continuing to approve budgets, construction programs, policies, curricula and programs designed to perpetuate, maintain or support a school system operated on a racially segregated basis.

2. It is further ORDERED that, since primary responsibility therefor rests with defendants, they shall prepare and submit to the Court a plan for the desegregation of Jackson Parish schools in accordance with paragraph 1 of this Order beginning with the 1965-1966 school year. This plan shall provide that desegregation will progress with all deliberate speed until all grades in all schools are included. The speed

and manner as to which the schools are desegregated shall be in accordance with the requirements set forth by the Fifth Circuit Court of Appeals in the following cases: Davis v. Board of School Commissioners of Mobile County, Alabama, 318 F. 2d 63 (5 Cir. 1963); Armstrong v. Board of Education of the City of Birmingham, Jefferson County, Alabama, 333 F. 2d 47 (5 Cir. 1964); Davis v. Board of School Commissioners of Mobile County, Alabama, 333 F. 2d 53 (5 Cir. 1964); Stell v. Savannah-Chatham County Board of Education, 333 F. 2d 55 (5 Cir. 1964); Gaines v. Dougherty County Board of Education, 334 F. 2d 983 (5 Cir. 1964); Lockett v. Board of Education of Muscogee County School District, Georgia, 342 F. 2d 225 (5 Cir. 1965); Price v. The Denison Independent School District, etc., ____ F. 2d ____, No. 21632 (5 Cir. July 2, 1965).

3. Defendants may submit one or more alternate plans and may designate the order of preference assigned by them to the plan or plans. All plans must be submitted within 30 days, after which counsel for plaintiffs will have 15 days to respond.

4. The question of desegregation of teaching and administrative personnel in the Jackson Parish schools will be deferred until the plan for desegregation of pupils, as finally approved, either has been accomplished or has made substantial progress. Augustus v. Board of Public Instruction of Escambia County, Florida, 306 F. 2d 862 (5 Cir. 1962); Calhoun v. Latimer,

321 F. 2d 302 (5 Cir. 1963); Lockett v. Board of Education of Muscogee County School District, Georgia, 342 F. 2d 225 (5 Cir. 1965); and Bivins v. Board of Public Education, etc., 342 F. 2d 229 (5 Cir. 1965).

5. The prayer for relief contained in the complaint with respect to the issuance, sale and delivery of school bonds is hereby dismissed.

6. Jurisdiction of this cause is retained for such further orders as may be necessary, just and proper.

THUS DONE AND SIGNED in open Court at Monroe, Louisiana, this 27th day of July, 1965.

S/ Ben C. Dawkins, Jr.

Chief Judge

U. S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
FILED
AUG 27 1965
ALT. U. S. CLERK
BY _____ DEPUTY

IN THE UNITED STATES DISTRICT COURT FOR

THE WESTERN DISTRICT OF LOUISIANA

MONROE DIVISION

MARGARET M. JOHNSON,
LONNIE E. JOHNSON, GLENDA
G. JOHNSON, AND KENNETH L.
JOHNSON by their father and
next friend ARMEY JOHNSON;
and CALVIN LEE MARA THOMAS,
by his father and next friend
SANDERS THOMAS, and all Negro students
and parents
similarly situated

vs. CIVIL ACTION NO. 11,130

JACKSON PARISH SCHOOL BOARD,
a Corporation, and
DR. A. A. MEREDITH, President,
and J. D. KOONCE, Superintendent.

M O T I O N

NOW INTO COURT, through their undersigned counsel, comes the JACKSON PARISH SCHOOL BOARD, DR. A. A. MEREDITH, President and J. D. KOONCE, Superintendent, defendants in the above styled and captioned cause, appearing herein for the purpose of this motion and with respect show and aver:

-1-

That on or about July 22, 1965, in the above styled and captioned cause, your movers herein were ordered by the United States District Court for the Western Distrist of Louisiana, Monroe Division to submit one or more alternate plans of desegregation in compliance with the Courts' order within thirty (30) days.

-2-

Your movers further show and aver that since the date of the Order and Decree of the United States District Court for the Western District of Louisiana, Monroe Division, your movers herein have proceeded with the development of such a plan to present to the Court, however, notwithstanding their diligence, your movers herein have been unable to complete the preparation of the plan for its submission to the Court and they are attempting to complete the same with all due diligence.

-3-

Your movers further show and aver that they have had to revise certain proposals by virtue of the decisions that have been handed down by the Federal Courts in order that they comply with the orders of the Court and the interpretation of the Laws of the United States of America.

-4-

Your m overs therefore show and aver that they do hereby request an extension of time within which to complete their plan as ordered by the Court and request that the Court grant to them an additional period of twenty (20) days for the purpose of completing such plan before submission to this Honorable Court and request that the attached order be signed granting to them the additional time as requested herein.

WHEREFORE, your movers pray, that this Motion be filed, and that considering the entirety thereof, that this Court sign the attached Order granting unto your movers an extension of time with which to complete its plan for submission to the Court.

Further prays for all other orders and decrees necessary and for general and equitable relief.

FRED JACKSON
District Attorney
Homer, Louisiana

HAL R. HENDERSON
Assistant District Attorney
Arcadia, Louisiana

HOLLOWAY & BAKER

BY: _____
WILLIAM H. BAKER
Special Counsel
Jonesboro, Louisiana

O R D E R

Considering the above and foregoing Motion and upon examining the reasons therefor:

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Jackson Parish School Board, Dr. A. A. Meredith and J. D. Koonce are hereby granted an extension of twenty (20) days before the filing of a desegregation plan in accordance with the Orders of this Court on July 22, 1965.

Thus done and signed in Shreveport on this the 27th day of August, 1965.

/s/ Ben C. Dawkins

HONORABLE BEN C. DAWKINS
Judge of U. S. District Court for
the Western District of Louisiana

Points

1. This is all meaningless - How many schools are there, how many pupil, where are the schools located, what types: i.e. technical, commercial, academic? Disparaties between schools of same type is inexcusable, hence what justification for criterion #3. How can Ct. evaluate the plan without this ~~[illegible]~~ of info.

2. Attack on rationale for right of choice?

3. Should include an explication of the justifications (s) underlying each of the criteria, How else can Ct. say whether they are "proper" They are not self explanatory

U. S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
FILED
SEP 16 1965
ALTON L. CURTIS, CLERK
BY
DEPUTY

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

MARGARET M. JOHNSON, LONNIE E. JOHNSON, GLENDA G. JOHNSON, and KENNETH L. JOHNSON by their father and next friend ARMEY JOHNSON; and CALVIN LEE MARA THOMAS, by his father and next friend SANDERS THOMAS, and all Negro students and parents similarly situated

vs.

CIVIL ACTION NO. 11,130

JACKSON PARISH SCHOOL BOARD, a Corporation, and DR. A. A. MEREDITH, President, and J. D. KOONCE, SUPERINTENDENT, Jonesboro, Louisiana

PLAN FOR DESEGREGATION

Respondent, Jackson Parish School Board, pursuant to this Court's order of July 27, 1965, presents to the Court a proposed plan for desegregation of the Jackson Parish School System.

The Jackson Parish School Board will, immediately after the approval of the plan herewith submitted, (a) cause to be published for three consecutive weeks in the Jackson Independent, a weekly newspaper, Jonesboro, Louisiana, and on three successive days in the Monroe Morning World, a daily newspaper, Monroe, Louisiana, a notice to persons responsible for pupils eligible to enter the first, second, eleventh, and twelfth grades, advising said persons that

applications for assignment for the first, second, eleventh, and twelfth grades of any school under its jurisdiction may be made in person at the Jackson Parish School Board Office. (b) In addition to the above notices all principals shall be notified to make an announcement to all the school children in their respective schools of the above procedures so that all children who desire to make a transfer to the school of their respective schools of the above procedures so that all children who desire to make a transfer to the school of their choice may do so.

The following rules and procedures shall be followed:

1. All initial pupil assignments made for the school year 1965-66 are subject to the following provisions:

(a) Application forms for transfers or assignments will be made available, upon request, by the School Board to all students and parents affected, and complete, detailed instructions as to procedures will be furnished with the applications.

(b) Transfers or assignments, when requested, shall not be unreasonably denied. No denial of a request for transfer or assignment shall be based on race or color. However, in determining whether or not a request for transfer or assignment shall be granted, the School Board, in considering the application for transfer or assignment, may consider the following factors as proper criteria to be applied in granting or denying the request for transfer or assignment:

(1) The desire or wishes of the pupil and his parents or guardian.

(2) The age of the pupil as compared with the ages of pupils already attending the school to which transfer is requested.

(3) The availability of requested or desired courses of study in the school to which the transfer is requested.

This seems clear

(4) Availability of space and other facilities in the school to which the transfer or assignment is requested.

(5) In the event a transfer or assignment is requested to a particular school, but it develops that there is available space in another school, in all respects comparable to the one to which transfer or assignment is requested, closer to the applicant's residence, the School Board may, if it deems it advisable, make the transfer or assignment to the comparable school closest to the pupil's residence, rather than to the school to which the transfer or assignment was requested.

very bad set of words

(6) Any new students, entering the school system for the first time, regardless of grade, shall be entitled to assignment according to their choice to the former all white school or former all Negro school closest to their place of residence.

OK

(7) No request for transfer or assignment may be denied solely on the grounds of technical errors or omissions made by the applicant or his parents or guardian in the preparation of the application for transfer or assignment.

OK

(8) No pupil will be granted more than one transfer in any one school year, except under special circumstances found justifiable by the School Board. Shouldn't need to if original request is considered fairly.

(c) All pupils requesting transfer or assignment in accordance herewith shall be notified in writing by the School Board of action taken on their requests for transfer or assignment not later than one week after application has been filed.

2. Commencing with the school ye 1966-67 all initial assignments of pupils to the first, second, third, fourth, ninth, tenth, eleventh, and twelfth grades in all schools under the supervision and control of the Jackson Parish School Board shall be made purely and simply on the basis of individual choice, reserving to all pupils, however, the right to apply for transfer in accordance with the procedures hereinabove established, and reserving to the School Board through its authorized representatives, the right to place a pupil in a comparable school other than the school of his choise should there be a comparable school closer to the pupil's residence than is the school of his choice.

3. The method of initial assignment herein provided for will, of course, be subject to all reasonable procedural requirements that may be adopted and promulgated by the Jackson Parish School Board.

4. Nothing contained in this plan shall be construed to prevent the separation of boys and girls in any school or grade, or to prevent the assignment of boys and girls to separate schools.

5. In each succeeding school year this planned desegregation shall progress so that all grades shall be included by September, 1967. Dual school districts on racial lines shall be abolished contemporaneously with the application of this plan to the respective grades when and as reached by the application of this plan.

6. For the school year 1966-67 grades, three, four, nine and ten will be desegregated; for the school year 1967-68 grades five, six, seven, and eight will be desegregated, all in accordance with the terms and provisions of this plan.

7. If any paragraph of these rules and procedures shall be held by any court of competent jurisdiction to be invalid for any reason, the remainder of such rules and procedures shall continue in full force and effect.

RESPECTFULLY SUBMITTED

JACKSON PARISH SCHOOL BOARD

IN THE UNITED STATES DISTRICT COURT FOR

THE WESTERN DISTRICT OF LOUISIANA

MONROE DIVISION

MARGARET M. JOHNSON, LONNIE E. JOHNSON, GLENDA G. JOHNSON, and KENNETH L. JOHNSON by their father and next friend ARMEY JOHNSON: and CALVIN LEE MARA THOMAS, by his father and next friend SANDERS THOMAS, and all Negro students and parents similarly situated

CIVIL ACTION NO. 11,130

vs.

JACKSON PARISH SCHOOL BOARD, a Corporation, and DR. A. A. MEREDITH, President, and J. D. KOONCE, SUPERINTENDENT, Jonesboro, Louisiana

---

OBJECTIONS TO PLAN FOR DESEGREGATION

The plaintiffs herein file the following objections to the proposed plan for desegregation submitted by the defendants pursuant to the order of the court herein, dated July 27, 1965:

1) The proposed plan denies equal protection of the law, pursuant to the Fourteenth Amendment of the United States Constitution, in that the plaintiffs and all others similarly situated, being Negro citizens of the state of Louisiana and of the United States, parents of children attending schools operated by the defendants are treated differently from white citizens and must request transfer whereas white citizens need not do so.

2) The proposed plan is cumbersome and places obstacles in the way of parents who wish

to make application upon the children's behalf to any school previously all white.

> First,the request by the parent must be made to the school board for an application. Secondly, the parent must fill out such application. Thirdly, the parent, must run a hostile gauntlet and file such application. Fourthly, a variety of factors upon which the board may deny the request are set forth, each of which is irrelevant to the decree of the court which ordered the desegregation of schools.

Only Criteria 7 and 8 in the proposed plan have any bearing on the order of desegregation issued by this court. The others interfere with the intent of the order of this court and of the Constitution and laws of the United states. By virtue of the Civil Rights Act of 1964, Title IV thereof, all children, regardless of race or color are entitled to attend a desegregated school. Nothing in this plan guarantees that assurance; in fact, to the contrary, the plan is designed to continue parish schools on a segregated basis under the pretense of being desegregated.

3) The proposed plan is inadequate in that it does not set forth in detail a program which will make certain the schools under its jurisdiction are desegregated. At the very minimum the forms for transfer should be sent to every parent in the parish with a simple explanation of how to affect the transfer of any child and not require all initiative on the parents of Negro children, and none on parents of white children.

4)

(a) Criteria 1 is designed to permit unnecessary interrogation of the parent and child as to the alleged desire to transfer.

(b) Criteria 2 is designed to give the defendant the excuse to reject any particular application for transfer by creating barriers between young children. Children in the same grade level should be in the same grade.

(c) Criteria 3 is similarly so. It is the duty of the defendant not to create a system which will perpetuate segregation as Criteria 3 is doing. It is the duty of defendant to provide courses for children and not plans to separate them.

(d) Criteria 4 is particularly designed to perpetuate segregation. Unless the children are permitted to transfer automatically, upon reasonable application being filed, the order of this court is thwarted. If Criteria 4 were permitted to stand there would never be space for the introduction of Negro children into formerly all white schools.

(e) With regard to Criteria 5, precisely the same is true. 4 and 5 together constitute a patent effort to prevent the order of this court being put into effect and so deny the rights of the plaintiffs under the Constitution and laws of the United States. Criteria 5 gives the Board too broad a power in light of the history of segregated schools in this parish.

(f) Criteria 6 cannot be discussed in full detail except to say it too is designed to prevent desegregation of these schools since the school buildings were constructed with the segregated nature of the housing and residental patterns of the parish in mind and this will merely perpetuate such patterns.

5) All the criteria except 7 and 8 are beyond the power of this board and should be stricken by the court since they are outside the scope of the order of this court and in violation of such order.

6) Unless a plan is proposed which will provide that the application of a parent on behalf of a child is accepted by a simple mechanical method starting from the proposition that all schools are completely open at this time and there are no seats in schools taken as of this time, the order of the court is thwarted, the United States Constitution and the laws of the United States are denied.

It is therefore respectfully requested that this Honorable Court direct the defendant to submit a new plan which will provide:

I a) that every parent in the parish be immediately given an application setting forth the desire of the parent as to the school he or she wishes his child to attend.

b) Upon receipt of these applications they shall be filed in numerical order, and shall be fulfilled in the same numerical order.

c) It shall be assumed that regardless of distance from the child's home, if the parent applies to a particular school he will make certain the child is present at such school unless the parish already provides public transportation for such school.

d) Said application shall provide alternative choices which shall be set forth by the parent in such order as the parents requests; providing there is space in said building for said child under the numerical system provided above, the first choice will be accepted; if such choice is filled then the second or third choice shall be granted.

II In the alternative, the board may propose a plan which shall provide that all first grade children attend a particular school in the parish, all second grade children attend another school,and third grade etc., through twelve grades; or further in the alternative the board may propose a alphabetical system which will be administered so as to effectuate desegregation of schools. Thus, the board may propose a plan that all children whose last name begins with "A" in the first grade shall go to a certain school, "B" to another school, etc. Or, thirdly in the alternative the board may propose a different plan which will insure the desegregation of these schools by means not set forth in itw own plan or in any of the proposals of plaintiffs.

Respectfully submitted
for the plaintiffs,

Robert F. Collins,
Nils R. Douglas,
Lolis E. Elie
2211 Dryades Street
New Orleans, Louisiana

Carl Rachlin
38 Park Row
New York, New York

Alvin Bronstein
603 N. Parish Street
Jackson, Mississippi

TO:

Hon. Ben C. Dawkins
U. S. District Judge for
the Western District of
Louisiana, Monroe Division

Hon. Brad Jackson
District Attorney
Homer, Louisiana

Hon. Hal R. Henderson
Asst. District Attorney
Arcadia, Louisiana

Hon. William H. Baker
Special Counsel
Jonesboro, Louisiana

Hon. John Doar, Asst. Attorney General
U. S. Department of Justice
Washington, D. C.

Mr. David Seeley, Office of Education
Dept. of Health, Education & Welfare
Washington, D. C.

U. S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
FILED
OCT 6 - 1965
ALTON L. CURTIS, CLERK
BY _____ DEPUTY

IN THE UNITED STATES DISTRICT COURT FOR

THE WESTERN DISTRICT OF LOUISIANA

MONROE DIVISION

MARGARET M. JOHNSON,
LONNIE E. JOHNSON,
GLENDA G. JOHNSON, and
KENNETH L. JOHNSON
by their father and next
friend ARMEY JOHNSON;
and CALVIN LEE MARA THOMAS,
by his father and next friend
SANDERS THOMAS, and all Negro
students and parents similarly
situated

vs. CIVIL ACTION NO. 11,130

JACKSON PARISH SCHOOL BOARD,
a Corporation, and
DR. A. A. MEREDITH, President,
and J. D. KOONCE, Superintendent,
Jonesboro, Louisiana.

ORDER ON PLAN FOR DESEGREGATION

Respondent, Jackson Parish School Board, pursuant to this Court's Order of July 27, 1965, has presented to the Court a proposed plan for desegregation of the Jackson Parish School System. The plaintiffs have presented their objections thereto.

Now, after due consideration of the proposed plan submitted by respondent and the objections thereto presented by plaintiffs, and after taking into consideration the local

problems inherent in any attempt to desegregate the public schools in Jackson Parish, as well as prior pronouncements of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, by which pronouncements this Court is bound:

IT IS ORDERED that the following plan for the orderly desegregation of the schools under the supervision and control of the Jackson Parish School Board be, and it is hereby, approved and adopted:

1. All initial pupil assignments made for the school year 1965-1966 will be considered adequate, subject however to the following transfer provisions:

(a) The Jackson Parish School Board will, not later than December 1, 1965, mail notices to all students, regardless of race or color, presently assigned for the school year 1965-1966 to the First, Second, Eleventh and Twelfth grades of any school under its jurisdiction, advising them that they may, from January 3, 1966, to January 7, 1966, apply in person, accompanied by parents or guardian, for transfer and reassignment to another school of their choice.

(b) Such transfers will be made in accordance with the procedures pertaining to transfers currently in general use by the Jackson Parish School Board.

(c) Application forms for transfers or assignments will be made available, upon request, by the School Board to all students and parents affected, and complete, detailed instructions as to procedures will be furnished with the applications.

(d) Transfers or assignments, when requested, shall not be unreasonably denied. No denial of a request for transfer or assignment shall be based on race or color. However, in determining whether or not a request for transfer or assignment shall be granted, the School Board, in considering the application for transfer or assignment, may consider the following factors as proper criteria to be applied in granting or denying the request for transfer or assignment:

(1) The desire or wishes of the pupil and his parents or guardian.

(2) Availability of space and other facilities in the school to which the transfer or assignment is requested.

(3) The age of the pupil as compared with the ages of pupils already attending the school to which transfer is requested.

(4) The availability of requested or desired courses of study in the school to which the transfer is requested.

(5) In the event a transfer or assignment is requested to a particular school, but it develops that there is available space in another school, in all respects comparable to the one to which transfer or assignment is requested, closer to the applicant's residence, the School Board may, if it deems it advisable, make the transfer or assignment to the comparable school closest to the pupil's residence, rather than to the school to which the transfer or assignment was requested.

(6) No pupil will be granted more than one transfer in any one school year, except under special circumstances found justifiable by the School Board.

(7) No request for transfer or assignment may be denied solely on the grounds of technical errors or omissions made by the applicant or his parents or guardian in the preparation of the application for transfer or assignment.

(8) Any new students, entering the school system for the first time, regardless of grade, shall be entitled to assignment according to their choice to the former all white school or former all Negro school closest to their place of residence.

(e) All pupils requesting transfer or assignment in accordance herewith shall be notified in writing by the School Board of action taken on their requests for transfer or assignment not later than January 14, 1966, to be effective at mid-term, 1966. If such notification is to the effect that the requested transfer or assignment has been denied, specific reasons for such denial shall be clearly set forth in the notification.

2. Commencing with the school year 1966-67 all initial assignments of pupils to the First, Second, Third, Fourth, Ninth, Tenth, Eleventh, and Twelfth grades in all schools under the supervision and control of the Jackson Parish School Board shall be made purely and simply on the basis of individual choice, reserving to all pupils, however, the right to apply for transfer in accordance with the procedures hereinabove established, and reserving to the School Board through its authorized representatives, the

right to place a pupil in a comparable school other than the school of his choice should there be a comparable school closer to the pupil's residence than is the school of his choice.

3. Commencing with the school year 1967-68, all initial assignments of pupils to all grades in all schools under the supervision and control of the Jackson Parish School Board shall be made purely and simply on the basis of individual choice, reserving to all pupils, however, the right to apply for transfer in accordance with the procedures hereinabove established, and reserving to the School Board through its authorized representatives, the right to place a pupil in a comparable school other than the school of his choice should there be a comparable school closer to the pupil's residence than is the school of his choice.

4. Dual school districts on racial lines shall be abolished contemporaneously with the application of this plan to the respective grades when and as reached by the application of this plan.

5. The method of initial assignment herein provided for will, of course, be subject to all reasonable procedural requirements that may be adopted and promulgated by the Jackson Parish School Board.

6. Nothing contained in this order shall be construed to prevent the separation of boys and girls in any school or grade, or to prevent the assignment of boys and girls to separate schools.

7. If any paragraph of these rules and procedures shall be held by any court of competent jurisdiction to be invalid for any reason, the remainder of such rules and procedures shall continue in full force and effect.

IT IS FURTHER ORDERED that respondents herein, and their successors in office, their agents, servants, representatives, or employees, and all other persons whomsoever acting in concert with any and all of such persons, are hereby permanently enjoined from doing anything calculated to obstruct or interfere with the orderly administration of this plan for effecting the transition of the schools hereinabove mentioned to a racially non-discriminatory basis.

Jurisdiction of this matter is retained for the entry of any further orders hereafter deemed necessary in the premises.

SIGNED this 5th day of October, 1965, at Shreveport, Louisiana.

_____

C H I E F J U D G E

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF LOUISIANA

MONROE LOUISIANA

JOHNSON, et al

vs. CIVIL ACTION NO. 11,130

JACKSON PARISH SCHOOL BOARD

. . . . . .

REQUESTED AMENDMENTS TO PLAN
FOR DESEGREGATION

with

1. In accordance/the school desegregation plans ordered by the United States District Court for the Eastern District of Louisiana in Jenkins Vs. City of Bogalusa School Board, Civil Action No. 15,798, and Caston Vs. East Feliciana School Board, Civil Action No. 3253 the following means of notification in addition to those suggested by the Jackson Parish School Board is requested:

The Jackson Parish School Board will mail a notice to all prospective first, second, eleventh and twelfth grade students and their parents regardless of race or color, by (specifying a date within three days of their approval of this plan), advising them that they may submit an application for the first, second, eleventh and twelfth grades no later than (specify a date three weeks from the date of the Court's approval of this plan), for re-assignment to a school other than that previously assigned. Application forms for such re-assignments will be made available along with the notice by the School Board to all students in grades one, two, eleven and twelve, and complete detailed instructions as to the procedures to be followed in applying for re-assignments will be furnished with the applications.

The above may constitute the first complete paragraph on page two and will obviate the need for paragraph 1a. on page 2.

2. Page 3, section 6 should read:

Any new student entering the school system for the first time,

regardless of grade, shall be initially assigned to the school nearest his place of residence. Such students may transfer, in accordance with the procedures set forth in this plan, to the former all white school or former all Negro schoolclosest to his place of residence.

3. Commencing with the school year, 1966-67 all pupils in the first, second, third fourth, ninth, tenth, eleventh, and twelfth grades in all school under the supervision and control of the Jackson Parish School Board shall be assigned to the School nearest their places of residence, reserving to all pupils, however, the right to apply for transfer to the school of their choice in accordance with the procedures hereinabove established, and reserving to the School Board through its authorized representatives, the right to place a pupil in a school, comparable in all respects, other than the school of his choice should there be a school, comparable in all respects, closer to the pupil's residence than is the school of his choice.

4. Add a new paragraph 4 reading:

Any pupil attending a school to which he was originally assigned on the basis of his race,color, or national origin shall have the right, irrespective of whether or not the grade he is attending has been desegregated, to transfer to another school in order to take a course of study for which he is qualified and which is not available in the school he is attending.

Paragraphs 4, 5, 6, and 7 on page 4 should then be numbered 5, 6, 7, and 8 respectively.

5. Add a sentence to page 4, paragraphs 6, reading:

As the dual system is abolished, the board shall present to the court for approval its maps and plans for a single system of geographic school districts.

Respectfully submitted:

COLLINS, DOUGLAS & ELIE
ATTORNEYS FOR PLAINTIFFS
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA

BY:_____

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF LOUISIANA

MONROE DIVISION

MARGARET M. JOHNSON,
LONNIE E. JOHNSON
GLENDA G. JOHNSON, and
KENNETH L. JOHNSON, by their
father and next friend
ARMEY JOHNSON, and CALVIN
LEE MARA THOMAS, by his father
and next friend, SANDERS THOMAS,
and all Negro students and parents
situated,

PLAINTIFFS

vs.

CIVIL ACTION
NO. 11,130

JACKSON PARISH SCHOOL BOARD,
a Corporation, and Dr. A.A.
MEREDITH, President and J.D.
KOONCE, Superintendent, Jonesboro,
Louisiana,

DEFENDANTS.

* *

NOTICE OF APPEAL

Notice is hereby given that the plaintiffs in the above-entitled cause, appeal to the United States Court of Appeals for the Fifth Circuit from those parts of the judgement of this Court on October 5, 1965, that provided for methods of transfer, that provided for pupil assignment on the basis of choice, and from those parts that ignored plaintiffs' objections to the proposed plan of desegregation.

Plaintiffs also appeal from the denial of costs and attorneys' fees.

October 27, 1965.

COLLINS, DOUGLAS & ELIE
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA

BY: _____

OF COUNSEL:
HARRIS DAVID, ESQ.
932 ROYAL STREET
NEW ORLEANS, LOUISIANA

CARL RACHLIN, ESQ.
38 PARK ROW
NEW YORK, NEW YORK

ALVIN J. BRONSTEIN, ESQ.
603 NORTH FARISH STREET
JACKSON, MISSISSIPPI

CERTIFICATE OF SERVICE

I, hereby certify that copies of the Notice of Appeal were served on opposing counsel by depositing them, postage prepaid in the United States Mail addressed to Hal R. Henderson, Assistant District Attorney, Second Judicial District, Jackson Parish, Louisiana, William H. Baker, Holloway and Baker, Jonesboro, Louisiana, Fred L. Jackson, District Attorney, Homer, Louisiana

ROBERT F. COLLINS

OCTOBER 28, 1965

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

NO. 23,173

MARGARET M. JOHNSON, ET AL., Appellants,	)
v.	)
JACKSON PARISH SCHOOL BOARD, ET AL., Appellees.	)

MOTION FOR LEAVE TO INTERVENE
AS OF RIGHT AS AN APPELLANT

The United States moves this Court for leave to intervene as of right as an appellant in this action.

1. The present action seeks relief from the denial of equal protection of the laws under the Fourteenth Amendment to the Constitution on account of race or color, that is, it seeks the desegregation, "with all deliberate speed," of the public elementary and secondary school system of Jackson Parish, Louisiana. The pending appeal involves the adequacy of a court-ordered desegregation plan under the

standards enunciated by this Court, the mandate of the Supreme Court of the United States and the equal protection clause of the Fourteenth Amendment.

2. The desegregation plan involved here is substantially identical to court-ordered plans involved in three other appeals currently pending in this Court. In two of these appeals, the United States is Appellant. United States v. Bossier Parish School Board, No. 22,863; United States v. Caddo Parish School Board, No. 23,274. In the third, the United States has this day filed a motion to intervene as an Appellant. Banks v. Claiborne Parish School Board, No. 23,192. The United States challenges the validity of all four plans on similar grounds and urges similar relief in each case.

3. Section 902 of the Civil Rights Act of 1964 (42 U.S.C. 2000h-2) authorizes the Attorney General, for and in the name of the United States, to intervene, on timely application, in any action commenced in any court of the United States seeking relief from the denial of equal protection of the laws under the Fourteenth Amendment to the Constitution, on account of race, color, religion, or national origin, if the Attorney General certifies that the case is of general public importance. See Singleton v. Jackson Municipal Separate School District, 348 F. 2d 729 (C.A. 5, 1965).

4. The certificate of the Attorney General that this case is of general public importance is attached hereto.

WHEREFORE, it is respectfully requested that the Court grant to the United States leave to intervene as of right in the instant case and thereafter to participate in the case as a party.

NICHOLAS deB. KATZENBACH
Attorney General

JOHN DOAR
Assistant Attorney General

DAVID L. NORMAN
Attorney, Department of Justice

CERTIFICATE OF SERVICE

I hereby certify that on January I served a copy of the foregoing Motion for Leave to Intervene as of Right as an Appellant upon the attorneys for Appellants and Appellees by mailing a copy to each of them as follows:

Collins, Douglas & Elie
2211 Dyrades Street
New Orleans, Louisiana

Attention: Nils R. Douglas, Esq.

Carl Rachlin, Esq.
38 Park Row
New York, New York

Alvin J. Bronstein, Esq.
603 North Farish Street
Jackson, Mississippi

Harris David, Esq.
932 Royal Street
New Orleans, Louisiana

Attorneys for Appellants

Honorable Fred L. Jackson
District Attorney
Second Judicial District
Homer, Louisiana

Hal R. Henderson, Esq.
Assistant District Attorney
Second Judicial District
Arcadia, Louisiana

William H. Baker, Esq.
Holloway & Baker
Jonesboro, Louisiana

Attorneys for Appellees

DAVID L. NORMAN,
Attorney,
Department of Justice,
Washington, D. C. 20530.

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

NO. 23,173

MARGARET M. JOHNSON, ET AL., Appellants,	)
v.	)
JACKSON PARISH SCHOOL BOARD, ET AL., Appellees.	)

CERTIFICATE OF GENERAL PUBLIC IMPORTANCE

Pursuant to section 902 of Title IX of the Civil Rights Act of 1964, 78 Stat. 266, I hereby certify that this case is of general public importance.

NICHOLAS deB. KATZENBACH
Attorney General of the
United States

LAW OFFICES
HOLLOWAY & BAKER
JONESBORO, LA.

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

NO. 23,173

MARGARET M. JOHNSON, ET AL.,
Appellants,

VS.

JACKSON PARISH SCHOOL BOARD, ET AL,
Appellees.

OPPOSITION TO INTERVENTION
AS OF RIGHT

MAY IT PLEASE THIS HONORABLE COURT, Defendants, appearing specially herein by undersigned counsel, hereby interjects opposition to motion of the United States of America for leave to intervene as of right in this Court, and with respect shows and avers:

-FIRST-

That the motion was not filed timely as required by V.S.C. 42:2000H-2 and law as the case has long been pending to the knowledge of movers.

-SECOND-

That the law applicable does not afford mover a right to intervene in the appellate court even if such motion is filed prior to the lodging of the record in said court.

-THIRD-

That leave to intervene would unduly deter determination of this matter.

-FOURTH-

That other adequate procedural avenues, such as V.S.C. 42:2000 C-6 are, and have been, available to mover.

WHEREFORE opponent moves this Honorable Court to reject the motion of the United States of America for leave to intervene as of right on the appellant level.

Further prays for all other orders and decrees necessary and for general and equitable relief.

Fred Jackson
District Attorney
2nd Judicial District
State of Louisiana

H. L. Henderson
Assistant District Attorney
2nd Judicial District
State of Louisiana

Holloway & Baker
Special Counsel
P. O. Drawer E
Jonesboro, Louisiana

By: William H. Baker
William H. Baker

C E R T I F I C A T E

I, William H. Baker, the Attorney for the Appellees in the above and foregoing answer, do hereby certify that a copy of the said Opposition was mailed to David L. Norman, Attorney of record for the Appellants, Department of Justice, Washington, D. C. 20530, before the filing of the same.

This the 15 day of FEBRUARY, 1966.

William H. Baker
William H. Baker

LAW OFFICES
HOLLOWAY & BAKER
JONESBORO, LA.

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

NO. 23,173

MARGARET M. JOHNSON, ET AL

Appellants,

VS.

JACKSON PARISH SCHOOL BOARD, ET AL,

Appellees.

OPPOSITION TO MOTION TO CONSOLIDATE

MAY IT PLEASE THIS HONORABLE COURT, defendants, appearing specially herein by undersigned counsel, hereby interjects Opposition to the Motion to Consolidate of the United States of America for leave to intervene as of right in this Court, and with respect shows and avers:

-FIRST-

That the motion for consolidation should be rejected because not timely applied for.

-SECOND-

That the motion for consolidation should be rejected because the cases do not present similar factual or legal setting to justify consolidation.

-THIRD-

That consolidation would prejudice opponents rights in this litigation and could result in substantial injustice.

WHEREFORE opponent prays that this Honorable Court reject the motion to consolidate in the interest of justice.

Further prays for all other orders and decrees necessary and for general and equitable relief.

Respectfully submitted,

Fred Jackson
District Attorney
2nd Judicial District
State of Louisiana

H. L. Henderson
Assistant District Attorney
2nd Judicial District
State of Louisiana

Holloway & Baker
Special Counsel
P. O. Drawer E
Jonesboro, Louisiana

By: William H. Baker
William H. Baker

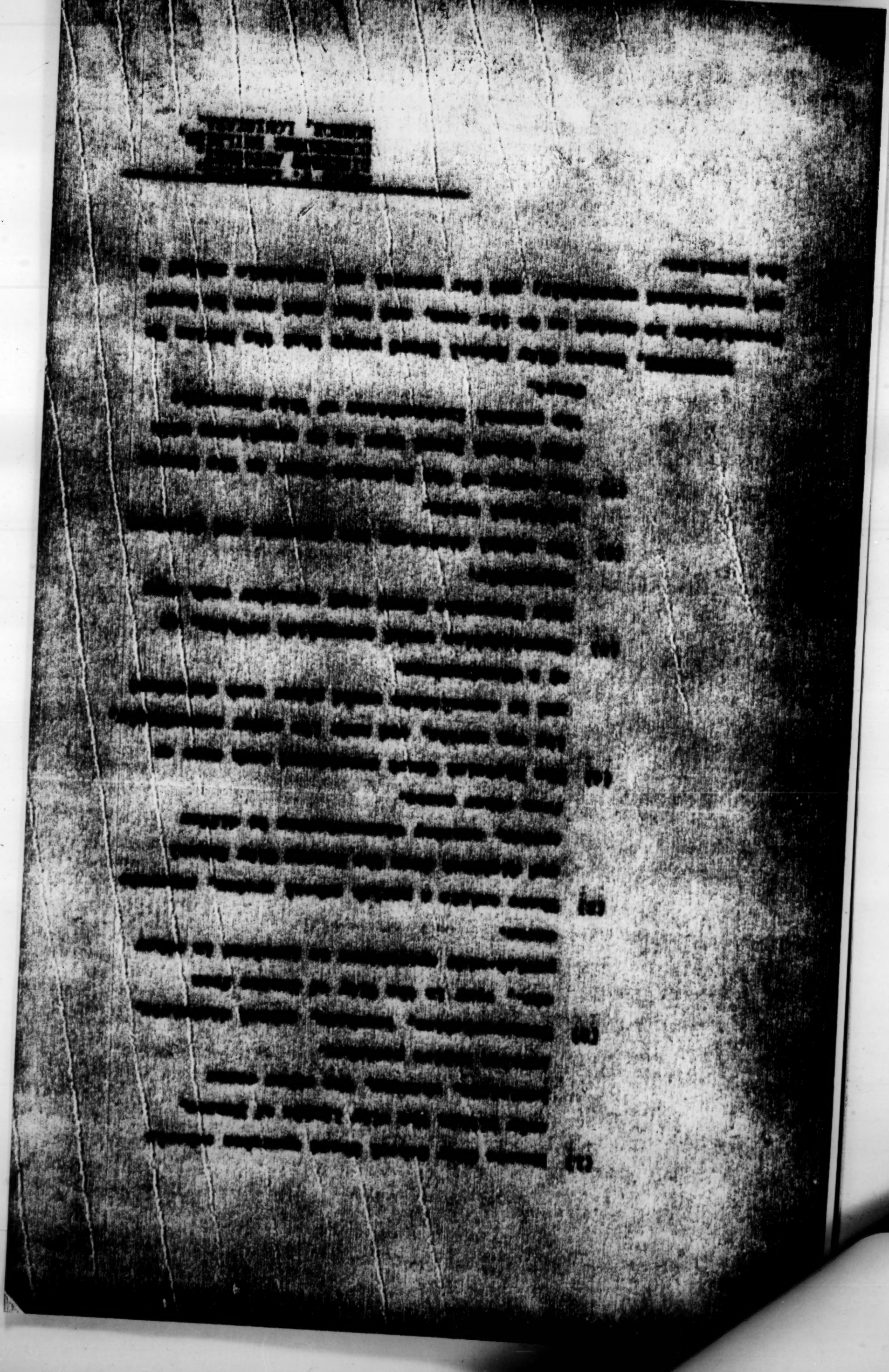
C E R T I F I C A T E

I, William H. Baker, the Attorney for the Appellees in the above and foregoing motion, do hereby certify that a copy of the above was mailed to Mr. Robert F. Collins, Mr. Carl Rachlin, Mr. Alvin J. Bronstein and Mr. William F. Pipes, Jr., Attorneys for Appellants, at 2211 Dryades Street, New Orleans, Louisiana, before filing of the same.

This the 15 day of FEBRUARY, 1966.

William H. Baker
William H. Baker

[redacted]



[redacted]

This will serve as [redacted] of [redacted] to [redacted] has been made through [redacted] to [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

February 18, 1944.

[redacted]

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

MONROE DIVISION

ARMEY JOHNSON and
SANDERS THOMAS,

Plaintiffs

vs.

JACKSON PARISH SCHOOL BOARD,
a Corporation, and DR. A. A.
MEREDITH, President and J. D.
KOONCE, Superintendent,

Defendants

CIVIL ACTION

#11130

* *

AMENDED PETITION

Now into court comes Armey Johnson and Sanders Thomas, plaintiffs in the above entitled matter and asks leave of court pursuant to rule 15 of the Federal Rules of Civil Procedure to amend their petition in the following respects:

1. That the caption of this matter be changed to:

MARGARETT M. JOHNSON, LONNIE E. JOHNSON
GLENDA G. JOHNSON, and KENNETH L.
JOHNSON by their father and next friend
ARMEY JOHNSON:
AND
CALVIN LEE MARA THOMAS, by his father
and next friend SANDERS THOMAS and all
Negro students and parents similarly
situated,

Plaintiffs

vs.

JACKSON PARISH SCHOOL BOARD, A
Corporation, and DR. A. A. MEREDITH,
President and J. D. KOONCE, Superintendent,

Defendants

2. That allegation number 3 of the complaint should read:

Infant and adult plaintiffs are Negro citizens of the United States, and of the State of Louisiana and are

domiciled in the Parish of Jackson. Armey Johnson and Sanders Thomas are registered voters, taxpayers and the fathers of children attending the public schools of Jackson Parish. All infant plaintiffs are attending the free, public schools of Jackson Parish, Louisiana. The remainder of the plaintiffs are citizens of the United States and State of Louisiana, Negroes, infants, and adults, similarly situated and constitute a class so numerous as to make it impracticable to bring them all before the court. The rights sought to be enforced for them are several and there is a common question of law and fact affecting the several rights and a common relief is sought.

WHEREOF, plaintiffs pray that they be premitted to file this their amended petition.

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA
523-5197
BY:_____

OF COUNSEL:
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NEW YORK 38, NEW YORK
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JACKSON, MISSISSIPPI

PLEASE SERVE ALL DEFENDANTS AT
P. O. BOX 705
JONESBORO, LOUISIANA

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

MARGARET M. JOHNSON, ETC., ET AL	:	
VS	:	CIVIL ACTION
JACKSON PARISH SCHOOL BOARD, ET AL	:	NUMBER 11,130

ANSWERS AND DEFENSES

NOW INTO COURT, through undersigned counsel, comes the JACKSON PARISH SCHOOL BOARD of Jackson Parish, Louisiana; DR. A. A. MEREDITH and J. D. KOONCE, named as defendants in this action, and who appear herein for the purpose of filing these defenses and responses.

FIRST DEFENSE

That the Court does not have jurisdiction, over the defendants the Jackson Parish School Board or Dr. A. A. Meredith or J. D. Koonce, Superintendent of Schools for said Board, by virtue of Article 19, Section 26 of the Louisiana Constitution, and Amendment 11 of the United States Consitution.

SECOND DEFENSE

That the plaintiffs' suit is premature since they not only have failed to exhaust all administrative remedies available to them but also they have failed to exhaust any such administrative remedy.

THIRD DEFENSE

That the plaintiffs, Margaret M. Johnson, Lonnie E. Johnson, Glenda G. Johnson and Kenneth L. Johnson, Calvin Lee Mara Thomas, nor their fathers, Armey Johnson and Sanders Thomas have no standing

to state a claim upon which relief can be granted, for the following causes and reasons, to-wit:

That until the institution of this suit the defendants did not know the names or identities of any of the plaintiffs and the plaintiffs nor their parents have not at any time made an application for admission, enrollment or transfer to any school other than the ones that the said children now attend and in each instance each of the children, regardless of their race, voluntarily enrolled in the school of their choice and in the school which is nearest to their home.

FOURTH DEFENSE

I.

That the defendants deny the allegations of Paragraph I of the Complaint.

II.

That the defendants aver that Paragraph II of the Complaint states merely conclusions of Law and requires no answer as the proposed School Board Bond Issue has been passed and the bonds have been sold and that a portion thereof with regards thereto requires no answer, but because of the implications placed therein, Paragraph II, each and every allegation contained therein are denied and further answering the said Paragraph, the defendants aver that as set forth hereinabove that only five of the plaintiffs are requesting admission and reside in Jackson Parish and there are several hundred colored children in the public schools of said Parish and it is extremely doubtful that the plaintiffs, in reality, do fairly and adequately represent the interest of the class which they seek to represent and particularly since no child, either colored or white has ever made an application for admission or transfer to another school other than the school which they now attend.

III.

That Paragraph III of the Complaint is denied.

IV.

That the allegations contained in Paragraph IV of the Complaint are denied.

V.

That the allegations contained in Paragraph V of the plaintiffs' Complaint are denied. And now further answering Paragraph V of the plaintiffs' Complaint, your defendants deny the allegations contained therein and allege that the defendants maintain and operate the Schools of Jackson Parish for all the children of the said School System, each school being located on a site situated to serve the best interest of the children in the area to be served, with special attention given to transportation.

Defendants have numerous professional personnel who work in schools of both races.

First grade students are registered in a conveniently located school with reference to their domicile.

All students have the privilege of seeking transfers from one school to another, which application proceedures are available to any parent regardless of race.

Defendants deny plaintiffs' allegation that students, principals or other personnel are not assigned to schools designated as white.

The defendants deny any discrimination against the plaintiffs or the members of the alleged class that they are attempting to represent in school construction, the formation of budgets or the disbursement of school funds. Defendants use well defined guides

and policies in all construction without regard to race or color and the said budget is established for each school in the elementary or secondary level depending upon the number of students which are attending. Defendants maintain that the formation of budgets and disbursement of school funds is without discrimination of any type or of any manner. Supplies and equipment are purchased and distributed on a pure and simple allotment basis, being equal for every child in every school at the same grade level.

Prior to the United States Supreme Court decision in the Brown case in 1954, the School Board operated the school system in obedience to and far exceeding the requirements of previous decisions which had established the "separate but equal" doctrine. The program which has been carried on by the School Board has had the exceptional support of the tax payers who have enthusiastically approved and voted taxes upon themselves in every bond election, the last bond election being in 1965 for a total of $800,000.00. The School Board Bond Elections were initiated by the School Board without any pressure placed upon them by any Court, agency or the institution of any type of legal action.

During all building programs the School Board nor its officials have never discriminated against Negroes and in fact large amounts of the receipts from the bond issues have been used for the securing of newer and better facilities than ones customarily used by white children. The School Board has used the per pupil budget allotment based solely on the grade level of the proposed school, all without discimination against anyone on the basis of race or color.

All of the above described non-discriminatory policies and procedures have been maintained throughout the years. The School Board has unremittingly endeavored to carry out its primary function and objective as it understands it, which is to provide the best possible education and training for all the public school children of Jackson Parish in accordance with need, without regard to race or color.

The same standards for all schools has been established by the School Board, based upon grade levels alone, but based exclusively upon need and without regard to race or color.

VI.

That the allegations contained in Paragraph VI of the plaintiffs' complaint are denied, except that it is admitted that there are eight (8) White schools, with One Thousand, Seven Hundred Fifty Six (1,756) White students in grades one (1) through eight (8) and Eight Hundred Seventy Six (876) White students in grades nine (9) through twelve (12) and that there are One Hundred Thirty Two (132) White teachers employed in these schools.

VII.

Paragraph VII of the plaintiffs' complaint is denied, except that it is admitted that there are four (4) Negro Schools and One Thousand, One Hundred Ninety (1,190) Negro students in grades one (1) through eight (8) and Four Hundred Ninety (490) Negro students in grades nine (9) through twelve (12) with Seventy Six (76) Negro teachers employed in these schools.

VIII.

In answer to Paragraph VIII of the plaintiffs' complaint, it is admitted that on March 30, 1965 a Parish-wide School Board Bond Issue of $800,000.00 was voted upon and approved by the property owners of the Parish and that bids on the bonds were scheduled to be submitted on June 3, 1965 and the bonds were sold on June 3, 1965 and it is further admitted that the bonds were issued for the purchase of improved school facilites in the Parish.

IX.

That the allegations contained in Paragraph IX of the plaintiffs' complaint are denied.

X.

That Article X of the plaintiffs' complaint requires no answer, however, if an answer is required, your defendants allege that they have fulfilled all of their obligations and duties under the Laws of the United States.

XI.

That no answer is required to Paragraph XI. of the plaintiffs' complaint and if an answer is required, the same is denied, except your defendants allege that they comply with and have attempted to comply with all of the Laws of the United States.

XII.

That the allegations contained in Paragraph XII of the plaintiffs' complaint are specifically denied and further answering defendants aver that the plaintiffs do not allege any facts showing what the irreparable injuries are that they claim to be suffering other than the conclusion of law that they "are irreparably injured."

Inasmuch as no child, either white or colored, has ever applied for admission or transfer to a school attended customarily by children of another race, plaintiffs cannot allege or claim that the defendants operate a "compulsory biracial school system" in Jackson Parish, Louisiana.

Your defendants further allege that as the same educational requirements are made by the Board as to qualifications of teachers and principals for all pupils regardless of race or color, (which your defendants allege is the practice of the School Board) the plaintiffs cannot claim that Negro children are being descriminated against in the employment of teachers, principals or school employees. No court having jurisdiction over the Jackson Parish School Board has ordered or attempted to rule that the School Board must compulsorily integrate teaching or administrative personnel or extracurricular activities. Plaintiffs have failed to allege any facts to show that desegration or integration of personnel is in any way necessary to fully implement the decision of the United States Supreme Court.

XIII.

And now further answering the plaintiffs' complaint, your defendants show that the schools of Jackson Parish have been built and classes conducted therein based on neigh b orhood and community need, all without discrimination on any basis and particularly on the basis of race or color.

Your defendants allege that in the light of all affirmative allegations made by them in these proceedings, particularly the ones averring that no child has ever applied for admission or transfer to a school attended customarily by children of another race and that the Jackson Parish Schools are maintained on the basis of need rather than on the sole basis of race or color, it would be disruptive to the school system for the Court to order desegration under these facts.

The plaintiffs' demands under the circumstances as shown herein would amount to desegration solely for the sake of desegration only. The plaintiffs children and the children themselves receive non-discriminatory and good educational instruction facilities and materials.

XIV.

Alternatively, if this Honorable Court should find that there is segregation in any of the schools of Jackson Parish, your defendants show that the same is voluntary and is not due to any compulsion by the School Board and is not the result of any State action nor cause of the use of governmental power. Therefore, such segregation (if the same is found to exist), which is denied, it is not illegal and is not subject to injunction by this or any other court, to grant an injunction against something that is voluntary and not compulsory and against defendants who are not compelling the same. The United States Supreme Court case does not commandintegration, it only condemns compulsory segregation.

Any policy of segregation that may have ever been fostered or declared by any School Board in Louisiana in the base has been superseded and suspended by various subsequent events such as repeals of various former segregation laws by the Louisiana Legislature, the declaring as unconstitutional of various Laws in the various Bush cases emanating in New Orleans in the Federal Fifth Circuit Court of Appeals, and the passage of the U. S. Civil Rights Act of 1964.

Thus, under the facts of this case, the granting of an injunction in this cause would be most improper.

XV.

Should this Honorable Court find that there is segregation in the Jackson Parish School System, whether by voluntary action or by custom of the plaintiffs, to such an extent that the Court feels bound to enter some order of judgment in favor of the plaintiffs then and in that event your defendants desire to make the following averments as alternative pleadings.

That your defendants most respectfully but firmly and conscientiously believe and allege that the decision of the United States Supreme Court in the Brown Case is totally erroneous and it was not decided upon legal principles of Law and it should be re-examined by that Court.

That the facts of this case and the operation of the Jackson Parish School System are different and would require a re-examination of the Brown decision in the light of its application to specific facts instead of abstract principles.

FIFTH DEFENSE

That the plaintiffs' complaint fails to state a complaint on which relief can be granted.

WHEREFORE, your defendants pray as follows:

1. That this answer be maintained good and sufficient;
2. That plaintiffs' complaint be dismissed in its entirety as to all plaintiffs;
3. That alternatively, that the plaintiffs' demands for injunction relief be denied.

4. In the alternative, that if the plaintiffs are entitled to any relief, which is denied, that the Court enter only such order or judgment as is required by law and equity; and that if such order be, that the Jackson Parish School Board should submit a plan or plans for compulsory desegregation of such schools as may be now voluntarily segregated, then, in such event, the defendants be given ample time therefor; and

5. For all full, general and equitable relief.

FRED L. JACKSON
DISTRICT ATTORNEY

HAL R. HENDERSON,
ASSISTANT DISTRICT ATTORNEY
SECOND JUDICIAL DISTRICT
JACKSON PARISH, LOUISIANA

Jack R. Henderson

WILLIAM H. BAKER
HOLLOWAY & BAKER
SPECIAL COUNSEL
JONESBORO, LA.

William H. Baker

C E R T I F I C A T E

I hereby certify that a copy of the above Defenses and Answer has been served on the attorney for the plaintiffs by placing same in the U. S. Mail addressed to them with sufficient postage thereto annexed.

William H. Baker
WILLIAM H. BAKER

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

JOHNSON	v.	JACKSON PARISH SCHOOL BOARD	No. 23,173
BANKS	v.	CLAIBORNE PARISH SCHOOL BOARD	No. 23,192
UNITED STATES	v.	CADDO PARISH SCHOOL BOARD	No. 23,274
UNITED STATES	v.	FAIRFIELD BOARD OF EDUCATION	No. 23,331
BROWN	v.	BOARD OF EDUCATION OF THE CITY OF BESSEMER	No. 23,335
UNITED STATES	v.	JEFFERSON COUNTY BOARD OF EDUCATION	No. 23,345
UNITED STATES	v.	BOSSIER PARISH SCHOOL BOARD	No. 23,365
APPELLANTS		APPELLEES	

SUPPLEMENTAL MEMORANDUM
OF THE UNITED STATES

JOHN DOAR,
Assistant Attorney General

DAVID NORMAN,
ELIHU LEIFER,
JOEL FINKELSTEIN,
Attorneys,
Department of Justice,
Washington, D. C. 20530

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

JOHNSON v. JACKSON PARISH SCHOOL BOARD	No. 23,173
BANKS v. CLAIBORNE PARISH SCHOOL BOARD	No. 23,192
UNITED STATES v. CADDO PARISH SCHOOL BOARD	No. 23,274
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UNITED STATES v. BOSSIER PARISH SCHOOL BOARD	No. 23,365
APPELLANTS APPELLEES	

SUPPLEMENTAL MEMORANDUM
OF THE UNITED STATES

The United States submits this memorandum pursuant to the request of the Court made during oral argument of these cases.

1. During oral argument the question was raised whether the proposed decree submitted by the United States allows for special assignment of students to special classes or schools for gifted or handicapped children. In order to clarify that point, we offer the following modification: insert after subsection (n) of Section II an additional subsection (o) as follows:

> (o) If the defendants operate and maintain special classes or schools for physically handicapped, mentally retarded or gifted children,

> the defendants may assign children to such schools or classes on a basis related to the function of the school that is other than freedom of choice. In no event shall such assignments be made on the basis of race or color or in a manner which tends to perpetuate a dual school system based on race or color.

2. During oral argument the question was raised whether the proposed decree submitted by the United States covers assignment of children entering kindergarten in school systems which offer kindergarten classes. As to this point, we offer the following modification: amend Section I by inserting after "grades _____" and any kindergarten grades. Section I would then read:

> Commencing with the 1966-67 school year, grades _____ and any kindergarten grades shall be desegregated and pupils assigned to schools in those grades without regard to race or color in accordance with the provisions of this decree. Commencing with the 1967-68 school year, all grades will be desegregated.

3. During oral argument the question was raised whether Section II, subsection (n) entitled "Official not to Influence Choice" of the proposed decree submitted by the United States prohibits bona fide professional guidance and counseling designed to assist students in choosing a school or selecting courses of study. In order to clarify this point, we offer the following modification: insert after the first sentence ending "a choice made." in subsection (n) of Section II the following sentence:

> If the defendant school board employs professional guidance counselors, such persons may give guidance and counseling to individual students based on the student's particular academic and vocational needs. Such guidance and counseling shall be available to all students without regard to race or color.

4. During oral argument the feasibility of requiring local boards to distribute by first class mail an explanatory letter and choice form to the parent or other adult person acting as parent of each student was questioned on the ground that such a requirement would impose on the boards an unreasonable and excessive expense. In light of the constitutional obligation which rests on school authorities to desegregate the schools, we believe that the boards should provide notice of a type that will, without question, bring home to all students their rights under the plan. Under some circumstances, conspicuous publication might suffice. But where the boards have consciously chosen to desegregate under a plan which depends for its success on the adequacy of the notice sent to the students and their parents, it is reasonable to require personal notice, which unlike newspaper publication, does not depend on the whereabouts and habits of intended recipients. We think notice which is personally delivered either to the student at his school or his parent is sufficient. In view of this, we offer the following modification to our proposed decree: delete subsection (f) of

Section II entitled "Mailing of Explanatory Letters and Choice Forms." and insert the following:

> (f) Personal Notice. On the first day of the choice period the defendant school board shall distribute an explanatory letter and a choice form to all students who will be entering a desegregated grade in the following year. The defendant school board shall make the distribution of the letter and form either by distributing such letter and form to each student at the school with instructions to transmit to his parent or other adult person acting as his parent or by mail to each student's parent or other adult person acting as the student's parent. The text for the explanatory letter and choice form shall conform as nearly as possible to the sample letter and choice form appended to this decree (Appendices A and B).

5. During oral argument, counsel for the United States cited Skidmore v. Swift & Co., 323 U.S. 134 (1944) in further support of our position that it is proper for the Court to give great weight to the policy statements issued by the Department of Health, Education and Welfare. In accordance with the suggestion of the Court, we include a brief discussion of that case.

In Skidmore v. Swift & Co., 323 U.S. 134 (1944), an action had been commenced in a federal district court by employees of Swift & Co. to recover wages at the overtime rates prescribed by the Fair Labor Standards Act (52 Stat. 1060, et seq.) for certain services which they had performed. At issue was whether these services constituted "employment" within the meaning of section 7(a) of

that Act. The district court and this Court, on appeal, decided this issue against the plaintiffs. The Supreme Court reversed. After acknowledging (323 U.S. at 137) that the statute had granted no rule-making power to the Wage and Hour Administrator with respect to the issue at hand ("[i]nstead, it put this responsibility on the courts"), the Court referred to an "interpretative Bulletin" which had been issued by the Administrator, and which contained his interpretation of the statutory phrase in question.[1/] The Supreme Court stated (323 U.S. at 139-140):

> There is no statutory provision as to what, if any, deference courts should pay to the Administrator's conclusions. And, while we have given them notice, we have had no occasion to try to prescribe their influence. The rulings of this Administrator are not reached as a result of hearing adversary proceedings in which he finds facts from evidence and reaches conclusions of law from findings of fact. They are not, of course, conclusive, even in the cases with which they directly deal, much less in those to which they apply only by analogy. They do not constitute an interpretation of the Act or a standard for judging factual situations which binds a district court's processes, as an authoritative pronouncement of a higher court might do. But the Administrator's policies are made in pursuance of

---

1/ Interpretative Bulletin No. 13 (1939), Wage and Hour Division, Department of Labor.

official duty, based upon more specialized experience and broader investigations and information than is likely to come to a judge in a particular case. They do determine the policy which will guide applications for enforcement by injunction on behalf of the Government. Good administration of the Act and good judicial administration alike require that the standards of public enforcement and those for determining private rights shall be at variance only where justified by very good reasons. The fact that the Administrator's policies and standards are not reached by trial in adversary form does not mean that they are not entitled to respect. This Court has long given considerable and in some cases decisive weight to Treasury Decisions and to interpretative regulations of the Treasury and of other bodies that were not of adversary origin.

We consider that the rulings, interpretations and opinions of the Administrator under this Act, while not controlling upon the courts by reason of their authority, do constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance. The weight of such a judgment in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.

Finding that the lower courts had misunderstood their function vis-a-vis the Interpretative Bulletin, the Court remanded the case for a decision based upon proper evaluation of the position taken therein. See also, United States v. American Trucking Association, 310 U.S. 534, 549 (1940); Goldberg v. Servas, 294 F. 2d 841, 847 (C.A. 1, 1961).

We submit, as we did during oral argument, that the principles announced by the Court in Skidmore

apply to the policy statements issued by the Department of Health, Education and Welfare and that this Court should draw upon the guidelines published by HEW in formulating relief in these cases. Indeed, for the reasons set forth in our briefs in these cases and the considerations expressed in Skidmore and this Court's decisions in second Singleton and Price, we urge the Court to adopt the proposed decree which we set forth in the appendix to our briefs with the modifications suggested above.

Respectfully submitted,

JOHN DOAR
Assistant Attorney General.

DAVID NORMAN,
ELIHU LEIFER,
JOEL FINKELSTEIN,
Attorneys,
Department of Justice,
Washington, D. C.

Certificate of Service

I hereby certify that a copy of the foregoing Supplemental Memorandum of the United States has been served by official United States mail in accordance with the rules of this Court to each of the attorneys in the cases to which the foregoing memorandum applies addressed as follows:

Hon. Fred L. Jackson
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2nd Judicial District
Homer, Louisiana

Hon. Hal R. Henderson
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Mr. Reid B. Barnes
Lange, Simpson, Robinson
and Somerville
317 North 20th Street
Birmingham, Alabama

Dated: June 3, 1966

JOEL FINKELSTEIN,
Attorney,
Department of Justice
Washington, D. C. 20530

We are sorry to
use this same
complaint in
Caddo Parish
[Shreveport]
but will need copies
to send State
together with legal
memo in this we
send Collins

U.S. DISTRICT COURT FOR

THE _____DISTRICT OF LOUISIANA

(Parents)
v.
A - B - C - D et al individually and as members of the duly constituted School Boa Board of Caddo Parish

Plaintiffs, by their attorneys, complaining of the defendants herein allege:

PARTIES

FIRST: Plaintiffs are citizens of the United States and of the State of Louisiana residing in Caddo Parish, who are taxpayers in said Paris (if this is the fact) and are the parents of minor children of school age who attend or are about to attend the Public Schools maintained by Caddo Parish and/or the School Board therein with the aid and assistance of the State of Louisiana.

SECOND: Said plaintiffs are Negroes and seek the relief herein in their individual and representative capacities on behalf of themselves, their children and all Negro citizens of the United States, resident in Caddo Parish, State of Louisiana, which persons constitute a class so numerous as to make it impracticable to bring all of them before this court, that there are common questions of law and fact affecting the entire class as described herein.

THIRD: The Defendants are the persons constituting the members of the School Board for Caddo Parish, State of Louisiana, and have been duly elected (or appointed if this is the fact) pursuant to the laws of the State of Louisiana, and serve in such capacity; within the scope of their duties is the maintenance, construction and operation of all publicly owned schools within such Parish, and also the erection of new schools and supervision over all personnel needed for the purposes of said schools.

JURISDICTION OF THE COURT

FOURTH: Jurisdiction of this Court is based upon:

(A) The United States Constitution and more particularly the 14th Amendment thereto in that plaintiffs, their children and all similarly situated have been deprived of the due process of law.

(B) Similarly, plaintiffs, their children and all similarly situated have been denied equal protection of the laws.

(C) Title 28, U.S. Code § 1343 providing for original jurisdiction in civil actions for deprivation under the color of State law of rights, privileges or immunities granted by the United States Constitution and denial of equal protection of the law.

(D) The amount in controversy exceeds $10,000.

(E) (i) Title 42 U.S. Code 1981

(ii) Title 42 U.S. Code 1983

(iii) Title 42 U.S. Code 1985 (3)

(iv) Title 42 U.S. Code 1986

(v) Title 42 U.S. Code 1988

FACTS

FIFTH: Upon information and belief the defendants in their official capacities as public officials of said Caddo Parish, and particularly as members of said School Board, have offered or are about to offer for purchase certain bonds, indentures, securities or other certificates of indebtedness bearing the seal, imprint and approval of Caddo Parish and/or the duly elected school board of Caddo Parish, of which the Defendants are the members and which bonds, indentures, securities or certificates of indebtedness pledge the credit and the promise to pay of the aforesaid Caddo Parish and/or the duly elected of said Parish and which will be paid from funds of the said Parish School Board/ ~~a substantial part of which will have been contribut~~ and/or the said School Board, a substantial part of which will have been contributed by Plaintiffs and others similarly situated as taxpayers of said Parish and the State of Louisiana; the aforesaid bonds, indentures, securities

or certificates of indebtedness were authorized as provided by the laws of the State of Louisiana in a referendum held on or about the _____ day of _____. (If this is not the method of setting the bonds in motion, we should allege the proper procedure at this point.)

SIXTH: Public announcements issued by or on behalf of Defendants have stated that these bonds and the proceeds therefrom will be used to construct and/or maintain the public school system of Caddo Parish, as described above, maintained by the said Defendants constituting the said School Board, its buildings and other property together with the cost of maintaining the same with the knowledge, consent, approval and assistance of the State of Louisiana and the Parish of Caddo.

SEVETH: The said public school system of Caddo Parish has been constructed and maintained in a segregated basis with separate schools and facilities for Caucasian and separate schools for Negro persons, all in violation of the equal protection and due process clause of the 14th Amendment to the U.S. Constitution as well as the various sections of Title 42, U.S. Code as referred to in FOURTH above, and that the aforesaid segregated schools have been maintained as the result of the official policy of said Defendants individually and in their capacity as members of said constituted School Board, and official support by the State of Louisiana and Parish of Caddo of the illegal custom of segregation of races in the public schools and other aspects of life in said Caddo Parish.

EIGHTH: At no time have Defendants or their predecessors in office, in their official capacity, put into effect or attempted to put into effect a fair and reasonable plan as required by the United States Constitution to effectuate the desegregation of the aforementioned officially maintained public school system, and furthermore it has been declared publicly that the schools to be built and/or maintained with the proceeds from these bonds will be built or maintained on a segregated basis.

NINTH: The aforementioned bonds, indentures, securities or certificates of indebtedness whose proceeds will be used by the Defendants herein for the continuance of illegally maintained, segregated public school system will further cause a denial of equal protection of the laws and due process of laws to Plaintiffs, their children and others similarly situated, as well as being unjust, unfair and inequitable.

TENTH: For the reasons aforesaid, the Defendants or any persons acting in concert with them or pursuant to their instruction, or on their behalf, whether as agents, servants, employees or otherwise, have no legal authority to have printed, to sell, offer for sale, distribute in any fashion and accept money from the sale of said bonds, securities, indentures or other certificates of indebtedness, nor can they pledge the credit of the said school board or of Caddo Parish the proceeds of which bonds, indentures, securities or certificates of indebtedness shall be used to maintain and/or construct publicly maintained schools on such segregated basis as described above.

ELEVENTH: Unless Defendants, their agents, servants, representatives, employees and any persons acting in concert with them or on their behalf be enjoined, restrained, and stayed from advertising for sale, selling, distributing or entering into any agreements to sell or distribute in any form any such bonds, securities, indentures or other certificates of indebtedness, and from pledging the credit of such Defendants, said school board or any of its subdivisions, agencies, or other bodies subject to its control, Plaintiffs and others similarly situated will continue to be denied fair and equal protection of the laws and due process of law, as guaranteed by the 14th Amendment as aforesaid, and will be caused to suffer great harm and indignity as well as suffer monetary damages as citizens of the United States and of Louisiana and as residents of Caddo Parish, unless Defendants, prior to the filing of an answer to this complaint, or at such time as may be designated by the Court, file and serve with this Court a fair and equitable plan for the desegregation of the said school system under their authority, and for the maintenance of said school system without regard to race, color, creed or national origin, which plan shall be caused to go into effect no later than the opening of the next session of said publicly maintained schools.

TWELFTH: That no previous request for this or similar relief has been sought by these Plaintiffs.

THIRTEENTH: That Plaintiffs have been forced to suffer damages and to undergo expenses to commence the action herein, which expenses would not have been incurred except for the failure of Defendants to carry out their legal

and constitutional duty; that counsel fees and expenses accordingly be awarded to said Plaintiffs in an amount of $15,000.

WHEREFORE: Plaintiffs in their indivdual capacities, and on behalf of all similarly situated have judgement against the defendants for the relief sought therein and further,

(1) Plaintiffs indivudally and on behalf of all similarly situated have judgment against Defendants, their agents, servants, representatives and employees and all persons acting for or on behalf of said Defendants, or in concert with them, or pursuant to their direction restraining, enjoining and otherwise prohibiting said Defendants, their agents, servants, representatives and employees from advertising for sale, issuing, printing, selling, offering for sale or distributing in any way or delivering to any person or persons any bond, security, indenture or any other form of certificate of indebtedness pursuant to any purported authority granted pursuant to the referendum dated _____ as set forth more particularly in #_____ above, or otherwise, unless and until, prior to the filing of their answer herein, or until such time as this court may designate, Defendants submit to this Court a fair and equitable plan for the forthwith desegregation of the publicly maintained schools under their jurisdiction, which plan shall take effect no later than the opening of the next session of the aforesaid public schools and

(2) Plaintiffs have judgment against Defendants for the sum of $15,000 for their damages herein and for necessary counsel fees and expenses and further

(3) Plaintiffs individually and on behalf of all similarly situated, have judgment for such other and further relief as may be necessary and proper herein.

#

March 31, 1965

Jesse N. Stone, Jr., Esq.
854½ Texas Avenue
Shreveport, Louisiana

Dear Jesse,

In approximately a month's time Caddo Parish will let out for sale a major school bond. Since I understand schools are still segregated and there is no indication to the contrary, we should begin an action to restrain the issuance of the bond on the grounds that it will be used for an unconstitutional purpose.

Please read the enclosed proposed complaint and the memorandum of law that goes with it. And then you and I should discuss the next steps. I would like to begin an action in your federal court as soon as possible.

Our friends Collins, Douglas & Elie, I hope, are beginning a similar action in St. Tammany Parish very soon because the bond is to be issued there on April 7th.

With best regards,

Sincerely,

Carl Rachlin
General Counsel

cc: Collins, Douglas & Elie
Mr. Richard Haley - No encs.
Murphy Bell, Esq.
Dr. George Wiley - No encs.
Mr. Marvin Rich "
Dept. of Organization "

Encs/
CR:hdl

Lawyers Constitutional Defense Committee, Inc.

Ninth Floor, 156 Fifth Avenue, New York, N. Y. 10010

(212) YU 9-7530

MAY 17 1965

President

LEO PFEFFER
Special Counsel
American Jewish Congress

Vice-Presidents

JOHN M. PRATT
Counsel, Commission on
Religion and Race
National Council of the
Churches of Christ

CARL RACHLIN
General Counsel
Congress of Racial Equality

Secretary

MELVIN L. WULF
Legal Director
American Civil Liberties Union

Treasurer

EDWIN J. LUKAS
National Affairs Director
American Jewish Committee

ROBERT L. CARTER
General Counsel
National Association for
the Advancement of
Colored People

The Rev. ROBERT F. DRINAN, S.J.
Dean
Boston College Law School

JACK GREENBERG
Director-Counsel
NAACP Legal Defense and
Educational Fund

CLARENCE B. JONES
Counsel to the
Rev. Dr. Martin Luther King, Jr.

HOWARD MOORE, JR.
Counsel
Student Non-violent
Coordinating Committee

Executive Secretary
HENRY SCHWARZSCHILD

Reply to:

Mississippi Field Office
603 North Farish Street
Jackson, Mississippi 39202
(601) 948-4191

ALVIN J. BRONSTEIN
Staff Counsel

May 13, 1965

Carl Rachlin, Esq.
CORE
38 Park Row
New York, N. Y.

Dear Carl:

I have your letter of May 11 and I will be in touch with you further with respect to most of your suggestions. Bruce is in Shreveport at this moment working on the school bond suits.

In connection with the Meridian Community Center, I completed what was requested of me and reported to John Allison with a copy to Marvin Rich on May 5 and I have been waiting for further instructions. You might ask Marvin to look at a copy of that letter which will bring you up to date.

Sincerely,

Alvin J. Bronstein

AJB:jb

May 17, 1965

Mr. Richard Haley
CORE Southern Regional Office
2209 Dryades Street
New Orleans, La.

Dear Richard:

Bruce Rogow of Al Bronstein's office in Jackson, Mississippi, has advised me that there is a great deal of difficulty in obtaining the plaintiffs in the Shreveport School Bond case and even in the Jonesboro School Bond case.

As you know, time is of the essence. I have understood that there were numbers of people, both in Shreveport and Jonesboro who were anxious to be the plaintiffs, namely a parent and a taxpayer. Are you in the position to assign someone to work on this until the complaints are served and on their way.

With regard to the copy of the letter you sent me, the original of which was addressed to Collins Douglas &Elie, it is extraordinarily difficult to vacate public offices or set aside elections. This does not mean it cannot be done, but we have to have a very clear case. It ought to be a parish or township in which the Negroes represent a potential majority of the voters and one in which it can be demonstrably proven for a variety of reasons they have been denied the opportunity to register and vote.

I do not know the details of the Sunflower County case except that they were beaten in the 5th Circuit. This case may have been a sound one, I don't really know. If it was, in light of the 5th Circuit decision, it will be difficult for the future. However, as we must understand, it is very easy to devise law suits. Particularly, law suits which have no chance of winning and are set in motion merely to tease the client into thinking something is being done. There has been too much of this in the civil rights movement.

I am in favor of an action to set aside or enjoin an election but the first case has got to be one that on the facts will be so overwhelming that the court or at least the appellate court really has no choice. In other words,

a. a potential majority of Negro voters

b. a variety of devices used to prevent Negroes from registering or voting

c. laws or administrative regulations designed to prevent Negroes from registering and voting.

When we have a combination of solicity built here, we are in the position to move. To move with less than a solid case would be to create a dangerous, adverse precedent which would be hard to overcome even when the right case does come along.

Cordially yours,

Carl Rachlin

CR:YS

CC: Collins Douglas & Elie
Alvin Bronstein, Esq.

Jackson Davis

MAY 2 4 1965

CORE SOUTHERN OFFICE
2209 Dryades Street
New Orleans, Louisiana 70113

May 21, 1965

Mr. Carl Rachlin
38 Park Row
New York 38, New York

Dear Carl,

I have communicated with Oretha Castle in North Louisiana concerning the matter of getting plaintiffs for the school bonds suits. I don't really anticipate too much trouble in Jonesboro; there may be even less in Greenwood (suburb of Shreveport), since CORE's stock in Greenwood is very high at present. I do know it is very hard to successfully challenge an election through the courts, and I am not looking for legalistic flamboyance. But I don't wish to brush aside any possibility because it is new or unconventional. I can see the need to observe the results of the new voting bill in our worst counties; there should very quickly---I hope---appear indicatinns of the effectiveness of that bill or the lack of it. At that point it seems to me it would be well to reopen this question.

Sincerely,

Richard

Richard Haley
CORE SOUTHERN DIRECTOR

RH/vjj

Jackson Parish Files

103 North Tenth Street
Monroe, Louisiana
May 26, 1965

Mr. Richard Haley
CORE Southern Director
2209 Dryades Street
New Orleans, Louisiana 70113

Dear Haley:

We received your letter concerning the school bond cases in Jonesboro and Shreveport. Staff in Caddo Parish were unable to secure plaintiffs from Greenwood because all the property owners are in some kind of homestead cooperative or something like that.

We are surprised to a greater degree than you are over the pessimism expressed in Carl Rachlin's letter about plaintiffs in Jonesboro. A few weeks ago when I came down to New Orleans, I brought Collins, Douglas & Elie signed retainer agreements and some other signed forms that had been given to us by Douglas as the necessary papers for the school case in Jonesboro.

Bruce Rogow, from L.C.D.C., was in Jonesboro two (2) weeks ago about the school case. He took with him a signed retainer and the information that he said was needed on one plaintiff. He took the information from another prospective plaintiff, and Sharon later mailed him the retainer agreement signed by the second plaintiff. Therefore, we are not pessimistic about Jonesboro, but just a wee bit confused.

We tried to reach Bronstein in Jackson today to find out exactly what the mix-up is, but were unable to reach him. We will try again tomorrow.

Freedom,

Oretha

OC/sb
cc: Carl Rachlin

Reply to:

May 27, 1965

Lolis Elie, Esq.
Collins, Douglas & Elie
2211 Dryades Street
New Orleans, Louisiana

Dear Lolis:

I am enclosing herewith original and four copies of the complaint in the Jackson Public School Bond suit. You will note that I have the complaint verified by one of the plaintiffs and I also have an affidavit in support of the T.R.O. made by one of the plaintiffs.

Please check the complaint and make any corrections that you feel should be made. As soon as same is in order, please have the complaint signed by a member of your firm and arrange for filing and service at the earliest possible moment. Keep in mind that the bid date is June 3.

Sincerely yours,

Alvin J. Bronstein

AJB:jb

cc: Carl Rachlin

UNITED STATES DISTRICT COURT
OFFICE OF THE CLERK
WESTERN DISTRICT OF LOUISIANA

JUL 2 1965

P. O. BOX 106
SHREVEPORT, LA. 71102
June 29, 1965

Mr. Carl Rachlin
Attorney at Law
38 Park Row
New York 38, New York

Dear Mr. Rachlin:

IN RE: Civil Action No. 11130-M
Margarett M. Johnson, et als
vs. Jackson Parish School
Board, et al

You are hereby notified that Judge Ben C. Dawkins, Jr. has set the above captioned case for trial on plaintiffs' application for preliminary injunction at Monroe, Louisiana, on July 27, 1965, at 9:30 A. M.

Very truly yours,

ALTON L. CURTIS, CLERK

By Bernadine R. Scarsone
Deputy Clerk

bls

July 8, 1965

Collins, Douglas & Elie, Esqs.
2211 Dryades Street
New Orleans, Louisiana

Alvin Bronstein, Esq.
LCDC
603 N. Farish Street
Jackson, Mississippi 39202

Dear Friends:

We have received, as I assume you have, notification of trial being set on our application for a preliminary injunction on the Jackson Parish case. We should discuss our preparation in this and what supporting memoranda we will have ready for the action.

Kindest regards,

Sincerely,

CARL RACHLIN
General Counsel

CR/cs

August 4, 1965

Mr. David Seeley
Office of Education
Tempo "S" Building, N. W.
Washington, D. C.

Dear Mr. Seeley:

I enclose a copy of the order of desegregation of the Jackson Parish Schools. Mr. Collins and I became very stubborn and would not agree to release the bonds, despite threats of suits, etc., until a statement was put on the record that the plan which will come forth within twenty-three days from this date will commence in September, 1965, and encompass at least four grades. Please note that Judge Dawkins omits the recent Fifth Circuit opinion that, in effect, directs following your guide-lines. While I am not the most enthusiastic follower of these guide-lines, if we are not careful, we may end up with less than that.

May I request your intervention, or that of the Department of Justice, in this proceeding.

Sincerely,

CR/cs

CARL RACHLIN
General Counsel

cc: Collins, Douglas & Ellie, Esqs.
Alvin Bronstein, Esq.
Hon. John Doar

Joe Love
Bonsh

August 31, 1965

Hon. John Doar
Assistant Attorney General
United States Department of Justice
Washington, D. C.

Dear John:

I enclose a motion and order signed by Judge Dawkins for the Western District of Louisiana, extending the time of Jackson Parish School Board to file a plan of desegregation for an additional 20 days, which by my calculations would expire on or about September 12.

I also enclose a copy of the sworn statement of Mrs. Etta Mae Andrews, one of the plaintiffs in the City of Monroe school bond desegregation case. I hope that you will agree with me that there is a violation of law here in the efforts used to get Mrs. Andrews to withdraw as a plaintiff in that case.

If we can help you in any further way, please let me know.

Sincerely,

CARL RACHLIN
General Counsel

CR/cs
Enc.

cc: David Seeley, Office of Education
Collins, Douglas & Ellis, Esqs.
Alvin Bronstein, Esq.

OCT 1 1965

COLLINS, DOUGLAS & ELIE
ATTORNEYS & COUNSELLORS AT LAW
201 DOUGLASS LIFE INSURANCE BUILDING
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA 70113

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE

TELEPHONE
523-5197

September 29, 1965

Mr. Carl Rachlin
CORE
38 Park Row
New York, New York

Dear Carl:

Enclosed is a copy of amendments to the Jackson School Plan filed on September 21. I spoke with Judge Dawkins on September 28 and he said that a hearing would be necessary and that he could not schedule one for three weeks. He said that an agreement on a plan would hasten his order.

Best wishes,

Harris David

HARRIS DAVID

HD/vmg
enclosure 1

September 29, 1965

Hon. Ben C. Dawkins
U. S. District Judge
Western District of
Louisiana - Monroe Division
Monroe, Louisiana

Dear Judge Dawkins;

Enclosed please find original and copy of the proposed objections to the Jackson Parish School Board plan for desegregation.

I hereby certify that all attorneys in this proceeding have, at the same time, been sent copies of our objections.

Sincerely,

CARL RACHLIN
General Counsel

CR/cs
Enc. 2

September 30,1965

Hon. John Doar
Asst. Attorney General
Department of Justice
Washington, D. C.

Dear John:

Enclosed is a copy of the plan of desegregation of Jackson Parish. I would appreciate your thoughts.

By the way, we won the City of Monroe School Bond case. While the plan will not commence until January, 1966 it will be completed in 2½ years for 12 grades. The plan is to be submitted.

Sincerely,

CARL RACHLIN
General Counsel

CR/cs
Enc.

September 20, 1965

Mr. David Seeley
Office of Education
Department of Health, Education
and Welfare
Washington, D. C.

Dear David:

Enclosed is a copy of the plan of desegregation of Jackson Parish. I would appreciate your thoughts.

By the way, we won the City of Monroe School Bond case, While the plan will not commence until January, 1966 it will be completed in 2½ years for 12 grades. The plan is to be submitted.

Sincerely,

CARL RACHLIN
General Counsel

CR/cs
Enc.

~~5 ACRES~~
~~PARISH~~
~~SCHOOLS~~

Carl: Re: Plan for Desegregation of Jackson Parish

1. Perhaps you are in possession of data which would clarify some of the language employed in the plan, and perhaps this conclusion applies to the Court which must evaluate it, but in the absence of substantially more information, I think an argument can be made that the plan is insufficiently vague: Should it not include information as to a) the geographic locations of all schools under the board's control b) the number of students in each school, and the total number of students enrolled in the Parish. c) ~~the~~ a sketch of each school, including a description of physical plant, curriculum outline, etc. As a preliminary matter this kind of information would seem indispensible to a reasoned evaluation

N.B. If the instructions do not require such, they should be attackable on these grounds-

2. At most what the board has outlined is an extremely vague transfer plan, arguably ~~this~~ Sec 601 of the Civil Rights Act requires that boards go further than this. A liberalized transfer plan could result in some desegregation - but the cause and effect relationship is casual at best; therefore, it is questionable whether this is a desegregation plan at all, since its

sole element is revolves around transfer.

N.B. If this complies with instructions, then it is questionable whether they comply w Sec 601.

3. Re: Criteria for reaching a determination on an application - how can the Court evaluate their propriety if, as the board does, their validity is simply assumed (p. 2, 1.(c). Therefore, the Board should be required to set forth reasons for its adoption of determinative criteria so that the Court and opposing Counsel may share in determining their relevance and validity

a) The board assumes not only the validity of the Criteria, but also assumes that the interest sought to be protected falls within ~~an unstated~~ a ~~but~~ valid exercise of power; and is self-evident. In this connection Criterion number 2 is meaningless.

b) Re: 1(b) 3 - Assuming, for example, that a student in high would want to transfer to another high School, as opposed to a trade School, this Criterion is worthless. Between grade schools and high schools there should not be such discrepancy in "courses of study," but in any event such discrepancies should be explained to the Court along with an explanations

of Corrective action the board contemplates. Again, we need to know what reasons underlie the criterion.

d) as you have noted # 4 (space availability) is highly subject to abuse. It re-emphasis the necessity for information on the present logistical situation. Standards 4, 5, and [redacted] 6, when combined lay the foundation for a shift to a "de facto" segregation policy which will be rationalized in terms of the efficacy of the neighborhood school. Thus, this Transfer plan lays groundwork for ultimate, legal circumvention of the Act. Any satisfactory plan should, at least prospective, should contain built-in safeguards against such a result. There seems no reason why children other than the very young [redacted] are necessarily benefitted by attending schools "closest" to their homes. The application of such policy to the latter group may be justified on grounds of safety; but unless we are talking about unreasonably (to be objectively defined) distances why shouldn't children be allowed to attend schools that are not close to their homes. On the other hand why, in terms of number 6, should they be <u>entitled</u> to attend <u>neighborhood</u> schools to the exclusion of those living further away. Unless we're talking about very young

Children, the only ~~excuse~~ justification for this privelege is that of convenience. Of course, the factor of Convenience could not stand to be weighed against the objectives sought by the Civil Rights Act of 1964, or the Brown decision-

c) In respect to the terms which the plan employs: "Comparable," "if it deems it advisable," etc, by what procedure will they be interpreted, and applied, and subject to what review short of resort to the courts?

#

Carl: I would like to have ~~had~~ had more time on this, but I know you are pressed. To do a through job, I would need a copy of the Court order, and information about schools in the parish. The instructions as set out in Race Relations Reporter are vague and inadequate. If it is possible to get more time to answer this, I think it would be a good idea to do so because this plan, with emphasis shifting to "neighborhood school" is the prototype of what can be expected all over the South, as you well know -

Jim

[1965, September]

Jackson Parish School Board

p. 2 first para, line 7 I do not understand the meaning of the line -- is it a typo ?

1(a) the forms ought to be available without formal request; perhaps simply on a table in the school board's office instructions and procedures ought to be available without the formality of a request
in fact I would suggest that the forms and the instructions be mailed to each and every eligible pupil

1(b)(3) I do not understand the distinction between "requested" and "desired" in this context -- is it merely lawayer's verbosity or is there some subtle way of excluding children

1(b)(4) I would like a better definition of "space and other facil ties" -- what beyond the availability of a classsroom seat(using some standard classroom size) is appropriate ?

1(b)(5) assuming that the school board would argue that all of the schools are comparable, and further assuming that most of the Negroes live within a ghetto, this would allow the school board, "as it deems advisable," to assign all of the Negro pupils to the "closest" school, viz the segregated neighborhood school. This strikes me as making the entire procedure a sham.

1(b)(6) This establishes the neighborhood school. While this will prevent Negroes from having to go pass a white school nearer their homes to a Negro school further away, it institutes the sanctity of de facto school segregation.

again on p.4 #2 the right to assign pupils to the closest school is reiterated.

Without having ever seen any of these forms before, my impression is that this ~~order~~ procedure is no great success. Rather it leaves a great many loopholes for the school board as well as enshrining the opportunity for neighborhood school segregation.

October 1, 1965

Harris David, Esq.
c/o Collins, Douglas & Elie, Esqs.
2211 Dryades Street
New Orleans, Louisiana

Dear Harris:

Apparently our respective objections to the Jackson Parish proposed desegregation plan must have crossed in the mail. After you have read ours let me know what you think. Personally, I am inclined to push for the broader attack such as is set forth in our proposals. If you agree with me we can arrange with Judge Dawkins either to withdraw the proposals you have made or combine them in some way. I would not like to forgo the attack on the entire pupil placement conception as illustrated in the parish plan. Implicit in my proposals is the attack also on the "guide-lines" of the Office of Education. In my view, the Office of Education guide-lines are largely responsible for the encouragement given to such plans as Jackson Parish has proposed.

In all likelihood we will have to appeal anyway, but I think it is important that the Fifth Circuit now take a look at some of the things they have been saying to the lower courts for refusing to go as far as the Office of Education guide-lines. I think we have got to try to persuade them that pupil placement by itself is denial of equal protection of the law.

Let me hear from you and please convey my deepest affections to Bob, Nils and Lolis and I hope their personal pronbles are coming to an end.

Sincerely,

CARL RACHLIN
General Counsel

CR/cs

cc: Alvin Bronstein, Esq.

UNITED STATES DISTRICT COURT

OFFICE OF THE CLERK
WESTERN DISTRICT OF LOUISIANA

P. O. BOX 106
SHREVEPORT. LA. 71102

October 5, 1965

Messrs. Collins, Douglas & Elie
Attorneys at Law
221 Dryades Street
New Orleans, Louisiana

Mr. Carl Rachlin
Attorney at Law
38 Park Row
New York, N. Y.

Mr. Alvin J. Bronstein
Attorney at Law
603 N. Parish St.
Jackson, Mississippi

Mr. Fred L. Jackson
District Attorney
2nd Jud.District Court
Jonesboro, Louisiana

Messrs. Holloway & Baker
Attorneys at Law
Jonesboro, Louisiana

Gentlemen:

Re: Civil Action No. 11130-M
Margaret M. Johnson, et al
vs. Jackson Parish School
Board, et al

We enclose to you herewith a copy of an order/ruling this date filed in the above captioned cause by Judge Ben C. Dawkins, Jr.,

Sincerely yours,

Alton L. Curtis, Clerk

By

Chief Deputy Clerk

TWT:Encl.

Sandy Ross
Dept 3831
Justice Dept

OCT 11 1965

October 8, 1965

Carl Racklin Esq.
General Counsel
C.O.R.E.
38 Park Row
New York, New York 10038

I am enclosing copies of the model geographic and model freedom of choice plans which we have been circulating. They go beyond the minimum requirements of the Guidelines, copy of which is also enclosed, and are 12 grade plans. In the event that they have to be tailored to less than 12 grades be certain to add the proviso contained in E4 (4) and try to get E4 (1) followed. We have consistantly ignored E4 (3) as a glaring example of madness in as much as the school boards could "allow pupils of both or either races to choose to attend school out of the District" - first coincidentally all the whites choose and the Negroes don't or vice-versa. E4 (5) is one I still don't understand.

Just

Note that these plans call for mandatory choice so as to obviate the myriad problems in permissive bumping etc. inherant in a voluntary or permissive basis plan.

Hope this gives you some idea of our thinking and also points out some of the areas of trouble. The transportation and teacher provisions should be included in every plan, if possible.

Hope this helps.

Sincerely,

Herbert C. Kane

[inclosed, Kane to Rachlin, 1965, October 8]

PLAN OF DESEGREGATION

_____
Name of school system

_____
Address

_____
City, county, state

I. Establishment of nonracial attendance zones

The _____ has adopted
(name of governing body of school system)

a plan to effect the desegregation of its schools through the establishment of a single, nonracial system of geographic attendance zones. The zone lines are drawn (as shown on the attached map(s)) to follow the natural boundaries and perimeters of compact areas surrounding each school in the system, so as not to result in the operation of a dual school system or other discrimination on account of race, color, or national origin. Detailed maps of the school district are attached, showing the location of each school, by grade, the attendance areas, and the racial composition of each school, under this plan. Separate maps are attached for elementary schools, and junior and senior high schools, showing the feeder system to be used. See attachment E.

II. Initial assignment

For the 1965-66 school year, and thereafter, all pupils in all grades shall be initially assigned to and required to attend the school located in the geographic zone in which they reside, except as set out in III below.

III. Attendance outside zone of residence.

Individual hardship and demonstrated medical requirements of the child shall be the only exceptions to II above, and race, color or national origin will not be considered.

IV. Right to attend school in zone of residence.

At the beginning of any school year, any pupil attending a school outside his zone of residence shall have the right to transfer to and attend the school in his zone of residence.

V. Notice

Each pupil and his parents or guardians shall receive notice in writing of the school to which the pupil is assigned under the zones established by this plan. For text of letter to be sent, see attachment A.

VI. Resident and Non-resident Attendance

This system will not accept non-resident students, nor will it make arrangements for resident students to attend schools in other school systems, where either of such actions would tend to preserve segregation or minimize desegregation. Any arrangement made for non-resident students to attend schools in this system, or for resident students to attend school in another system, will assure that such students will be assigned without regard to race, color, or national origin, and such arrangement will be explained fully in an attachment made a part of this plan. (Attachment D)

VII. Transportation.

All transportation furnished or sponsored by this school system shall be provided on an equal basis, without segregation or other discrimination based on race, color, or national origin.

VIII. Services, Facilities, Activities, and Programs

There shall be no discrimination based on race, color, or national origin, with respect to any services, facilities, activities, and programs sponsored by or affiliated with the schools of this school system.

IX. Staff Desegregation

A. Teacher and staff desegregation is a necessary part of school desegregation. Steps shall be taken beginning with school year 1965-66 toward elimination of segregation of teaching and staff personnel based on race, color, or national origin, including joint faculty meetings, in-service programs, workshops, other professional meetings and other steps as set forth in Attachment C.

B. The race, color, or national origin of pupils will not be a factor in the initial assignment to a particular school or within a school of teachers, administrators or other employees who serve pupils, beginning in ☐ 1965-66 ☐ 1966-67.

C. This school system will not demote or refuse to reemploy principals, teachers and other staff members who serve pupils, on the basis of race, color, or national origin; this includes any demotion or failure to reemploy staff members because of actual or expected loss of enrollment in a school due to desegregation.

D. Attachment B hereto consists of a tabular statement showing: 1) the number of faculty and staff members employed by this system in 1964-65, by race; 2) comparable data, by race, for 1965-66; 3) the number of such personnel demoted, discharged or not reemployed for 1965-55, by race; 4) the number of such personnel, by race, newly employed for 1965-66. Attachment B further consists of a certification that in each case of demotion, discharge or failure to reemploy, such action was taken wholly without regard to race, color, or national origin.

X. Publicity and Community Preparation

Immediately upon the acceptance of this plan by the U.S. Commissioner of Education, copies of this plan, will be made freely available to all persons at the superintendent's office and all schools, and will be given to all television and radio stations and all newspapers serving this area. They will be asked to give conspicuous publicity to the plan, including a description of all its provisions. In addition, an advertisement of not less than one-half page will be conspicuously placed in the newspapers serving this area. The advertisement or other newspaper coverage will set forth the text of the plan and shall include a detailed description of the geographic zones which have been established along with a map showing zone boundaries. In addition, meetings and conferences will be called to inform all school system staff members of, and to prepare them for, the school desegregation process, including staff desegregation. Similar meetings will be held to inform Parent-Teacher Associations and other local community organizations of the details of the plan, to prepare them for the changes that will take place.

XI. Certification

This plan of desegregation was duly adopted by _____ (name of governing body and school system) at a meeting duly called and held on _____ (date).

Signed: _____
(Chairman, Superintendent or other comparable authorized official)

_____
(title of signing officer)

ATTACHMENTS

A. Copy of letter of notification of school assignment.

B. Tabular Statement as to Faculty and Staff

C. Additional Steps Toward Staff Desegregation

D. Arrangements made for any Students to Attend Schools by Crossing School System Lines, together with a statement, for 1964-65 as to (1) the number of pupils, by race, grade, school attended and school location, residing within the boundaries of this school system who attended schools in another school system; (2) number of pupils, by race, grade, school attended and school system of residence, who resided within the boundaries of another school system and attended public schools within this system; and (3) the sources of their tuition and transportation expense if public funds were used for these purposes.

E. Map(s) of School System, showing: boundaries of system, boundaries of zones, school locations, and projected racial composition of each school for the school year 1965-66.

F. Initial Compliance Report (see General Statement of Policies item VI-B) covering the school year 1964-65.

Additional Steps Toward Staff Desegregation

Attachment C

Below are possible steps toward faculty and staff desegregation which have been taken in other school systems and one or more of which you may deem appropriate for your system to adopt at this time. Please indicate by checking the appropriate box or boxes and attach this page to the plan when submitting it.

1. ☐ All members of the supervisory staff will be assigned to serve schools, teachers and pupils without regard to race, color or national origin.

2. ☐ Teachers and staff members who serve more than one school, such as librarians, music and art teachers, nurses, counselors will be assigned to serve schools, teachers and pupils without regard to race, color, or national origin.

3. ☐ During the first semester of 1965-66, "pioneer teachers" of both races will be selected and given special preparation and, during the second semester of school year 1965-66, assigned to exchange classrooms and schools periodically.

4. ☐ Institutions, agencies, organizations and individuals that refer teachers and staff to school systems in this State will, during school year 1965-66 be informed of this school system's policy of nondiscrimination in filling positions for serving pupils in this school system and they will be asked to so inform persons seeking referrals.

5. ☐ In the future, there will be no requirement or request for the photograph of or racial identification of applicants for employment, reemployment or reassignment.

6. ☐ All teaching vacancies will be prominently posted in all schools and applicants will be considered without regard to race, color or national origin.

7. ☐ No new teacher will hereafter be employed who is not willing to work on a completely desegregated basis.

8. ☐ Other steps as follows:

[Enclosed, Kane to Rachlin, 1965, Oct. 8]

PLAN OF DESEGREGATION

_____
(Name of School System)

_____
(Address)

_____
(City, County, State)

I. ANNUAL FREEDOM OF CHOICE OF SCHOOLS

A. The _____ (name of governing body of school system) has adopted a policy of complete freedom of choice to be offered annually in all grades of all schools without regard to race, color, or national origin.

B. The choice is granted to parents, guardians and persons acting as parents (hereafter called "parents") and their children. It is required that a choice of school be made for each child. Teachers, principals and other school personnel are not permitted to advise, recommend or otherwise influence which choice is made. They are not permitted to favor or penalize children because of choices.

II. PUPILS ENTERING FIRST GRADE

Registration for the first grade will take place Monday through Friday between _____ (insert date), 1966 to _____ (insert date), 1966 from _____ a.m. to _____ p.m. and at equivalent times annually thereafter. When registering, the parent is required to complete a Choice of School Form for the child. The child may be registered at any elementary school in this system, and the choice made may be for that school or for any other elementary school in the system.

III. PUPILS ENTERING OTHER GRADES

A. Each parent will be sent annually a letter, the text of which is attached, annually explaining the provisions of the plan, together with a Choice of School Form, the text of which is also attached, and a self-addressed return envelope, at least 15 days before the date when

REV-1 8/65

the choice form must be returned. Choice forms and letters to parents will also be readily available to parents or students and the general public in the school offices during regular business hours.

B. The Choice of School Form must either be mailed or brought to any school or to the superintendent's office by _____, 1966 and by an equivalent date annually thereafter. Anyone not registering his choice by that date must file his Choice of School Form at the time of registration when school opens. Anyone from whom a Choice of School Form is still not obtained will be assigned to the school nearest his home, where space is available after school assignments have been made in accordance with all choices submitted, but without regard to race, color, or national origin.

IV. PUPILS NEWLY ENTERING SCHOOL SYSTEM OR CHANGING RESIDENCE WITHIN IT

A. Parents of children moving into the area served by this school system, or changing their residence within it, after the registration period is completed but before the opening of the school year, will have the same opportunity to choose their children's school just before school opens by obtaining from any school or from the superintendent's office a Choice of School Form and a letter to parents and by returning the completed form to any school or to the superintendent's office at any time during the _____ week of _____. First
(first, second, etc.) (month)
preference in choice of schools will be given to those whose Choice of School Form is returned by the final date for making choice under II B above.

B. Any child moving into the area served by this school system, or changing his residence within it, after the late registration period referred to in A above but before the next regular registration period, shall be assigned to the school chosen where space is then available without regard to race, color, or national origin.

V. RESIDENT AND NON-RESIDENT ATTENDANCE

This system will not accept non-resident students, nor will it make arrangements for resident students to attend schools in other school systems, where either such action would tend to preserve segregation or minimize desegregation. Any arrangement made for non-resident students to attend schools in this system, or for resident students to attend school in another system, will assure that such students will be assigned without regard to race, color, or national origin, and such arrangement will be explained fully in an attachment made a part of this plan.

VI. OVERCROWDING

A. No choice will be denied for any reason other than overcrowding and no preference will be given for prior attendance at any school. Where a school would become overcrowded if all choices to attend that school were granted, pupils will be assigned in such manner that each will have an opportunity to obtain a desegregated education. Moreover, assignments will be made, to the maximum extent feasible, so that each pupil may attend a school close to his home. Under this principle, it may be necessary, in some cases, to deny a pupil's choice to attend the nearest school to his residence and to offer him instead another choice, not involving an unreasonable travelling distance, in order to have space enough to grant another pupil's first choice for the first school where such other pupil would have to travel a lengthy distance from his residence to a school of his second choice if his first choice were not granted.

B. Anyone whose choice is denied because of overcrowding will be notified and required to make another choice from among all other schools in the system serving his grade level where space is available.

VII. TRANSPORTATION

Transportation will be provided on an equal basis without segregation or other discrimination because of race, color, or national origin. The right to attend any school in the system will not be denied because of lack of school system transportation from the pupil's home to the school chosen. To the maximum extent feasible, busses will be routed so as to serve each pupil choosing any school in the system. In any event, every student eligible for bussing shall be transported to the school to which he is assigned under the provisions of this plan if his first choice is either the formerly white or the formerly Negro school nearest his residence.

VIII. SERVICES, FACILITIES, ACTIVITIES AND PROGRAMS

There shall be no discrimination based on race, color, or national origin, with respect to any services, facilities, activities and programs sponsored by or affiliated with the schools of this school system.

IX. STAFF DESEGREGATION

A. Teacher and staff desegregation is a necessary part of school desegregation. Steps shall be taken beginning with school year 1965-66 toward elimination of segregation of teaching and staff personnel based on race, color, or national origin, including joint faculty meetings, in-service programs, workshops, other professional meetings and other steps as set forth in Attachment C.

B. The race, color, or national origin of pupils will not be a factor in the initial assignment to a particular school or within a school of teachers, administrators or other employees who serve pupils, beginning in ☐ 1965-66 ☐ 1966-67.

C. This school system will not demote or refuse to reemploy principals, teachers and other staff members who serve pupils, on the basis of race, color, or national origin; this includes any demotion or failure to reemploy staff members because of actual or expected loss of enrollment in a school due to desegregation.

D. Attached D hereto consists of a tabular statement showing: 1) the number of faculty and staff members employed by this system in 1964-65, by race; 2) comparable data, by race, for 1965-66; 3) the number of such personnel demoted, discharged or not reemployed for 1965-66, by race; 4) the number of such personnel, by race, newly employed for 1965-66. Attachment D further consists of a certification that in each case of demotion, discharge or failure to reemploy, such action was taken wholly without regard to race, color, or national origin.

X. PUBLICITY AND COMMUNITY PREPARATION

A. Immediately upon the acceptance of this plan by the U.S. Commissioner of Education, copies of this plan, including the letter to parents and the Choice of School Form, will be made freely available to all persons at the superintendent's office and all schools, and will be given to all television and radio stations and all newspapers serving this area. They will be asked to give conspicuous publicity to the plan, including a description of all its provisions. If the plan does not receive prominent and full front page newspaper coverage, an advertisement of not less than one-half page will be conspicuously placed in the newspapers serving this area. The advertisement or other newspaper coverage will set forth the text of the plan, the letter to parents and the Choice of School Form. Similar prominent notice of the substance of the choice provisions (I through VII above) will be arranged for at least once a week thereafter until the final date for making choices. In addition, meetings and conferences will be called to inform all school system staff members of, and to prepare them for, the school desegregation process, including staff desegregation. Similar meetings will be held to inform Parent-Teacher Associations and other local community organizations of the details of the plan, to prepare them for the changes that will take place.

B. The same steps set forth in A above will be taken annually at least three weeks before the final date set under II and III above for making choices, and conspicuous notice (other than legal notice) will again be prominently run in the newspapers serving this area for at least three consecutive weeks immediately preceding the date set under IV above. In addition, copies of the plan, including the letter to parents and the Choice of School Form, will be freely made available at all times to any person by the Superintendent's office and by all schools.

XI. CERTIFICATION

This plan of desegregation was duly adopted by _____ (name of governing body and school system) at a meeting duly called and held on _____ (date).

Signed: _____
(Chairman, Superintendent or other comparable authorized official)

_____
(title of signing officer)

Text of Choice of School Form

(Official School System Letterhead)

Date Sent to Parents and Guardians: _____

CHOICE OF SCHOOL FORM

This form is provided for you to choose a school for your child to go to next year. It does not matter which school the child attended last year and it does not matter whether the school was formerly a white or a Negro school. The form must be either mailed or brought to any school or to the Superintendent's office at the address above by _____.
(Insert Date)

1. Name of Child _____
Last First Middle

2. Date of Pupil's Birth (if entering first grade) _____
Month Day Year

3. Grade Pupil Eligible for _____

4. School Last Attended _____

5. School Chosen (Mark X beside school chosen)

☐ _____ _____ _____
(Name of School) (Grades) (Location)

☐ _____ _____ _____
(Name of School) (Grades) (Location)

☐ _____ _____ _____
(Name of School) (Grades) (Location)

☐ _____ _____ _____
(Name of School) (Grades) (Location)

Signature _____

Address _____

Date _____

****

This block is to be filled in by the Superintendent's office, not by parents.

School chosen: _____ School assigned to: _____

If different, explain: _____

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Text of Annual Letter to Parents

(Official School System Letterhead)

Date: _____

Dear Parent:

A plan for the desegregation of our school system has been put into effect so that our schools will operate in all respects without regard to race, color, or national origin. Copies of the plan may be obtained upon request at the address above or from any school.

The desegregation plan provides that each pupil and his parent or guardian has the absolute right to choose each year the school the pupil will attend. This means that you may pick any school in our school system, no matter whether it has been in the past white or Negro, and no matter where the child went to school before. A choice is required for each child. No teacher, principal or other school official is permitted to advise you, or make recommendations or otherwise influence your decision. No child will be favored or penalized because of the choice made.

Attached is a Choice of School Form listing the names and locations of all schools in our system and the grades they include. Please mark a cross beside the school you choose, and return the form in the enclosed envelope or bring it to any school or the Superintendent's office by _____ (insert date).

No choice will be denied for any reason other than overcrowding. Anyone whose choice is denied because of overcrowding will be offered his choice from all other schools in the system where space is available in his grade.

School bus routes will be on a desegregated basis, and transportation will be provided for all pupils eligible for it if a choice is made for the nearest formerly white or formerly Negro school to the child's residence. There will be no discrimination based on race, color, or national origin in any school-connected services, facilities, activities and programs.

Sincerely yours,

Superintendent

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ATTACHMENTS

A. Choice of School Form

B. Annual Letter to Parents

C. Additional Steps Toward Staff Desegregation

D. Tabular Statement as to Faculty and Staff

E. Arrangements made for any Students to Attend Schools by Crossing School System Lines, together with a statement, for 1964-65 as to (1) the number of pupils, by race, grade, school attended and school location, residing within the boundaries of this school system who attended schools in another school system; (2) number of pupils, by race, grade, school attended and school system of residence, who resided within the boundaries of another school system and attended public schools within this system; and (3) the source of their tuition and transportation expense if public funds were used for these purposes.

F. Map of School System, showing: boundaries, school locations, markings and legend indicating the following: grades to be taught in school year 1965-66; racial composition by each school for 1964-65; buildings to be constructed, if any, with estimated date of completion and grades to be taught, and schools to be closed in whole or in part, if any, with estimated dates.

G. Initial Compliance Report (see General Statement of Policies item VI-B) covering the school year 1964-65.

Additional Steps Toward Staff Desegregation

Attachment C

Below are possible steps toward faculty and staff desegregation which have been taken in other school systems and one or more of which you may deem appropriate for your system to adopt at this time. Please indicate by checking the appropriate box or boxes and attach this page to the plan when submitting it.

1. ☐ All members of the supervisory staff will be assigned to serve schools, teachers and pupils without regard to race, color or national origin.

2. ☐ Teachers and staff members who serve more than one school, such as librarians, music and art teachers, nurses, counselors will be assigned to serve schools, teachers and pupils without regard to race, color, or national origin.

3. ☐ During the first semester of 1965-66, "pioneer teachers" of both races will be selected and given special preparation and, during the second semester of school year 1965-66, assigned to exchange classrooms and schools periodically.

4. ☐ Institutions, agencies, organizations and individuals that refer teachers and staff to school systems in this State will, during school year 1965-66 be informed of this school system's policy of nondiscrimination in filling positions for serving pupils in this school system and they will be asked to so inform persons seeking referrals.

5. ☐ In the future, there will be no requirement or request for the photograph of or racial identification of applicants for employment, reemployment or reassignment.

6. ☐ All teaching vacancies will be prominently posted in all schools and applicants will be considered without regard to race, color or national origin.

7. ☐ No new teacher will hereafter be employed who is not willing to work on a completely desegregated basis.

8. ☐ Other steps as follows:

October 8, 1965

Hon. John Doar
Asst. Attorney General
Department of Justice
Washington, D. C.

RE: Jackson Parish School Board

Dear John:

I enclose a copy of Judge Dawkins' order from the Jackson Parish school case. I also enclose a copy of my letter to Harris David, Esq. of New Orleans, instructing him to appeal from this order.

I respectfully urge that the Department of Justice appear in this proceeding on the appeal. I think this order shows to what extent the Civil Rights Act may be thwarted variations on plans supporting pupil placement and area schools. I would urge that you support, generally, the position that we took in filing our objections to the plan. In our view any plan that does notpprovide for mechanical placing of children invites continuation of segregation. Furthermore, any plan which requires parents to beg for an application and explain why they wish to transfer a child is degrading. The minimum any pupil placement plan should require (even though I dislike them all) is to declare all schools vacant and applications be received starting fresh. At least in this way black and white will be treated, hopefully, in one fashion and placement will be based on numerical order of application or or alphabetical, or a variety of the Princeton Plan, or any other means which will produce a desegregated school in fact. I hope to hear from you in this regard shortly. With best personal regards,

Sincerely,

CR/cs CARL RACHLIN

cc: Alvin Bronstein, Esq. Mr. Herbert Kane
Harris David, Esq.

October 8, 1965

Harris David, Esq.
c/o Collins, Douglas & Elie, Esqs.
2211 Dryades Street
New Orleans, Louisiana

RE: Jackson Parish
School Board

Dear Harris:

In yesterday's mail I received a copy of Judge Dawkins' order filed October 5, in the Office of the Clerk in the United States District Court, for the Western District of Louisiana. I strongly recommend that you file an appeal immediately, and that the appeal be based in large part subject to modification and correction, upon the issues raised in the objections to the plan filed by us in New York, a copy of which was sent to you.

While I have not made a word for word study of Judge Dawkins' order, his order appears to follow quite literally the proposed plan offered by the Parish. This leaves us with no alternative, not merely to appeal but to attack both the conceptions which will perpetuate segregated schools, (a) the requirement of application for transfer and (b) the use of area schools. It is so easy to abuse either or both of these, and unless we make an attack right now it will be too late.

Please let me know when you have filed the Notice of Appeal and ask that in view of the fact that it is a school matter that it be placed on the emergency calender for hearing.

Cont'd...

Simultaneously I am asking the Department of Justice and the Office of Education to intervene against the order signed by Judge Dawkins.

Please let me know how Elie and Collins home problems have worked out. I am most anxious to hear. Give all there my kindest regards.

Sincerely,

CARL RACHLIN
General Counsel

CR/os

cc: Alvin Bronstein, Esq.
Hon. John Doar
Mr. Herbert Kane

OCT 11 1965

COLLINS, DOUGLAS & ELIE
ATTORNEYS & COUNSELLORS AT LAW
201 DOUGLASS LIFE INSURANCE BUILDING
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA 70113

October 8, 1965

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE

TELEPHONE
523-5197

Carl Rachlin, Esq.
38 Park Row
New York, New York

Dear Carl:

I think the objections to the Jackson Parish School Plan are definitely worth pursuing, and I think that my objections should be withdrawn except for paragraphs 4 and 5. I am unclear as to whether you have filed your objections with the Court.

My basic problem with your plan is that it still seems to call for a choice on the part of the parents — see page 4, and force the parents to expose themselves to intimidation. (Also the wording in paragraphs I (a) and (d) are confusing).

The alternate plans you suggest on page 5 are the most desirable since this puts the burden on the school board rather than the parent.

I have styled my objections to the Claiborne Parish Plan on this premise. A copy of these objections are enclosed.

One problem in Jackson is that there are seven or eight children who have been anxiously awaiting integration. If we go to the 5th Circuit, they will be lose this year. Do you think that an attempt should be made to seek a preliminary injunction pending the order of a plan?

Best wishes,

COLLINS, DOUGLAS & ELIE

BY: Harris David
HARRIS DAVID

HD/ew

Dear Harris
I am not sure whether my
letter crossed yours
with objections
I am glad
to get about
Please let me know
if necessary
Regards
Carl

Jet 1:50 pm

October 13, 1965

Harris David, Esq.
c/o Collins, Douglas & Elie, Esqs.
2211 Dryades Street
New Orleans, Louisiana

Dear Harris:

I am not sure whether our letters crossed or not. I did file my objections. I am glad you agree about appealing.

Please get whatever record is necessary. Regards to all,

Sincerely,

CARL RACHLIN
General Counsel

CR/cs

UNITED STATES DISTRICT COURT
OFFICE OF THE CLERK
WESTERN DISTRICT OF LOUISIANA

P. O. BOX 106
SHREVEPORT, LA. 71102

November 19, 1965

Mr. Edward W. Wadsworth, Clerk
United States Court of Appeals
Room 408 - 400 Royal Street
New Orleans 16, Louisiana

Dear Mr. Wadsworth:

IN RE: Civil Action No. 11,130-M
Margarett M. Johnson, etc., et als vs. Jackson Parish School Board, et als

Pursuant to Rule 23 of the Rules of your Court and in accordance with Rule 75(g) FRCP, we enclose to you herewith the entire record in the above captioned case and a certified copy of the docket entries.

Copy of this letter is being sent to all counsel of record.

Very truly yours,

ALTON L. CURTIS, CLERK

By Bernadine L. Scarsone
Deputy Clerk

bls
encls.
cc: Messrs. Collins, Douglas & Elie
Mr. Carl Rachlin
Mr. Alvin J. Bronstein
Mr. Fred L. Jackson
Messrs. Holloway & Baker

COLLINS, DOUGLAS & ELIE
ATTORNEYS & COUNSELLORS AT LAW
201 DOUGLASS LIFE INSURANCE BUILDING
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA 70113

November 24, 1965

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE

TELEPHONE
523-5197

Carl Rachlin, Esq.
38 Park Row
New York, New York

Re: Jackson, Claiborne, Monroe School Appeal

Dear Carl:

The Fifth Circuit clerk informed me that the earliest hearing we could get would be this Spring and that we would have to file a motion for an expedited appeal for that. I don't think this sets us back since the existing school plans will go into effect, and it would be difficult to get a decision on a suit of this proportion in time to help us this school year.

Best wishes.

Harris David

HARRIS DAVID

HD/vmg

United States Court of Appeals

FIFTH CIRCUIT

EDWARD W. WADSWORTH
CLERK

OFFICE OF THE CLERK

ROOM 408 - 400 ROYAL ST.
NEW ORLEANS, LA. 70130

November 26, 1965

Messrs. Robert F. Collins
Nils R. Douglas and
Lolis E. Elie
Attorneys at Law
2211 Dryades St.
New Orleans, La.

Re: No. 23173 - Margaret M. Johnson, et al
-vs- Jackson Parish School Board, et al

Dear Sir:

This is to advise that this office has received the transcript of record in the above case.

A deposit of $ 310.00 is requisite to cover the estimated costs of Court and printing of the record; this deposit is estimated as follows:

Estimated number of printed pages.....(120).....		
at $2.50 per page.....	$	300.00
Reproducing (pages that cannot be set in type) and Inserting (booklets, patents, etc. furnished by counsel).....**.....	$	10.00
Total Estimated Cost of Printing Record.....	$	310.00
Docketing Fee.....	$	
TOTAL.....	$	310.00

Usually the deposit required will exceed the actual cost of printing and the balance out of said deposit will be refunded after the record is printed.

(A CERTIFIED CHECK OR EXCHANGE ON NEW YORK OR NEW ORLEANS BANK, OR MONEY ORDER FOR THIS DEPOSIT IS DUE AND PAYABLE WITHIN 15 DAYS FROM RECEIPT OF THIS REQUISITION, AS PROVIDED IN RULE 23(2).

When the record is printed a copy will be forwarded to all counsel whose appearance has been entered, with notice as to the time for filing briefs, etc.

cc: Mr. Carl Rachlin
Mr. Alvin J. Bronstein
Mr. Harris David
Mr. Fred L. Jackson
Mr. Hal R. Henderson
Mr. William H. Baker

Very truly yours,

EDWARD W. WADSWORTH, CLERK

**See Schedule Attached

By Lydia G. Comberrel
Deputy Clerk

FPI—LK—3-31-65—3M—4883

[Enclosed, Comberrel to Rachlin, 1965, Nov. 26]

MEMORANDUM FROM CLERK TO COUNSEL

The attached requisition covers the cost of printing the entire record as bound and certified up by the District Court, including any exhibits which may be physically incorporated therein. This requisition does not cover the cost of printing any exhibits or depositions certified by the Clerk separately from the original bound record, which are automatically considered by the Court in their original form without the necessity of their being reproduced.

I am authorized to remind counsel that this Court encourages you to reduce by designations or stipulation the size of the record to be printed, in order to minimize the costs of appeal, by eliminations of any unnecessary printing expense, such as that attributable to the printing of subpoenas, citations, summons, certificates of service, and such exhibits which may have been bound into the record*, but which could nevertheless still be conveniently considered by this Court in such form without being printed or photostated, etc.,together with all other "matters not essential to the decision of the questions presented by the appeal." See Fifth Circuit Rule 23(a)(6),(b) and (c); Rule 75(e),F.R.C.P. Further, Rule 23(a) provides that "the Court may refer to other (unprinted) portions" of the record on file, or hereafter "cause others to be printed if found needful." If, therefore, counsel desire to omit any portions of the record deemed unnecessary to be printed in the light of this memorandum, this may btill be done either by stipulation or by separate designations exchanged and filed in this office within fifteen (15)days from the date of the enclosed requisition. If this is done, a revised requisition will be forwarded to counsel.

*If the Clerk of the District Court has not advised counsel, either by furnishing you with a copy of his index or otherwise, of the exhibits, if any, which have been physically bound into the record, the record on appeal may be released to counsel upon request for his inspection for a limited period pursuant to Rule 5(4) of this Court

November 30, 1965

Harris David, Esq.
c/o Collins, Douglas & Elie, Esqs.
2211 Dryades Street
New Orleans, Louisiana

RE: Jackson Parish
Claiborne Parish

Dear Harris:

We have just received in the mail the appearances in the above two cases. We have not yet received the similar appearances in the City of Monroe case. As you know, I think it important that we move to consolidate these cases or in the alternative, to have them all heard at the same time, since they involve almost identical issues of law and very similar issues of fact. I would appreciate your advising me about this aspect of the matter.

As agreed, we will of course do the briefs and conduct the argument. I would hope however, that one of the men in your office would participate jointly in the argument also.

With best regards,

Sincerely,

CARL RACHLIN
General Counsel

CR/cs

cc: Nils Douglas, Esq.
Alvin Bronstein, Esq.

December 20, 1965

Harris David, Esq.
c/o Collins, Douglas & Ellis, Esqs.
2211 Dryades Street
New Orleans, Louisiana

RE: Jackson Parish
City of Monroe
Claibourne Parish

Dear Harris:

How is our motion to consolidate coming along in our three school cases?

Regards,

CARL RACHLIN
General Counsel

CR/cs

P.S. Please send me a copy of Concordia Parish school complaint.

United States Court of Appeals

FIFTH CIRCUIT

EDWARD W. WADSWORTH
CLERK

OFFICE OF THE CLERK

ROOM 408 - 400 ROYAL ST.
NEW ORLEANS, LA. 70130

February 7, 1966

Hon. John Doar
Assistant Attorney General
Department of Justice
Washington, D. C.

Re: No. 23173 - Margaret M. Johnson, et al
-vs- Jacksonn Parish School Board, et al

Dear Sir:

I am authorized by this court to advise that your **Motion for Leave to Intervene as of Right as an Appellant** was received and filed this **7th** day of **February**, 19**66**, and under the rules and practice of this Court will be presented for ruling without oral argument on or about **February 23, 1966*** , together with any response or opposition that may be filed by opposing counsel by that date.

Very truly yours,

Edward W. Wadsworth

EDWARD W. WADSWORTH,
Clerk

/bwc
cc: Mr. Alvin J. Bronstein
Mr. Harris David
Mr. Carl Rachlin
Mr. Fred L. Jackson
Mr. William H. Baker
Mr. Hal R. Henderson

* This is only the date on which it is now expected that the matter will be forwarded for ruling, and does not mean that this office will be able to advise counsel of the Court's action by then. Counsel should allow at least ten days' time thereafter for advice as to the Court's ruling before making inquiry.

Jackson,
Claiborne
Moore
School Cases

February 16, 1966

William Q. Keenan, Esq.
219 East 42nd Street
New York, New York 10017

Dear Bill:

Some newly discovered files provided much of the materiel which you requested. I have requested Harris David of Collins, Douglas & Elie, Louisiana to supply the remainder of the materials, which you should have before the week is out. The time limitations are not as crucial as I had thought they were. We have still not received copies of the printed record or of a notice that we have 30 days in which to file our brief. Therefore, we have more than 30 days (how much more, no one really knows) to file. I trust that the materials enclosed will provide most of the basic answers to your very appropriate questions as to what the cases are all about. I believe that most of the other materials you requested are most necessary for the statement of facts and the statement of the cases, rather than for the brief itself.

In any case, I have every hope that they will be in your hands shortly.

Cordially,

STEPHEN M. NAGLER
Assoc. to General Counsel

SMN/cs
Enc.

Jackson, Clairborne, Monroe, School Case

February 16, 1966

Harris David, Esq.
Collins, Douglas & Elie, Esqs.
2211 Dryades Street
New Orleans, Louisiana

Dear Harris:

Carl is in California this week and in the meantime, I am trying to clear up a couple of matters that have been left lying around. Foremost among these are the Louisiana school cases. We just received your motion to consolidate the cases and are waiting to hear the result.

We are being assisted in writing the brief by Bill Keenan, one of our volunteer lawyers. Unfortunately, however, a number of things are missing from our files and we are therefore, unable to supply him with all of the materials he feels he needs. The letter enclosed lists these. Those items which are marked with an "x" have already been made available to him. I would appreciate your assistance in bringing Bill up to date on the other materials.

Thank you very much.

Sincerely,

STEPHEN M. NAGLER
Assoc. to General Counsel

SMN/cs
Enc.

February 17, 1966

Harris David, Esq.
c/o Collins, Douglas & Ellis, Esqs.
2211 Dryades Street
New Orleans, Louisiana

Dear Harris:

Enclosed please find a copy of a letter from Bill Keenan regarding Andrews v. City of Monroe. As you can see, Bill desperately needs all of the items as soon as possible. We do not have copies of these papers in our files.

I have advised Bill that I believe that the records are now being printed. Is this correct? Please let Bill and I know about the status and progress of the cases.

Thank you very much.

Sincerely,

STEPHEN M. NAGLER
Assoc. to General Counsel

SMN/cs
Enc.

cc: William Q. Keenan, Esq.

February 17, 1966

William Q. Keenan, Esq.
219 East 42nd Street
New York, New York 10017

Dear Bill:

Unfortunately, I can provide none of the items that you requested from our files, and I have therefore, asked Harris David, of Collins, Douglas & Elie, who is responsible for the progress of these cases, to get the information to you as soon as possible.

I believe that the record is now being printed and that when the printing is completed, we will receive copies and a notice that we have 30 days in which to file our brief. Until that time, we have neither printed records nor time limitations. As you can see from the enclosed letter, I have asked Harris to advise us about the progress of both.

Thank you very much for your time and patience.

Very truly yours,

STEPHEN M. NAGLER
Assoc. to General Counsel

SMN/cs
Enc.

cc: Harris David, Esq.

MAY 4 1966

DJ:EIL:cmc
169-33-8 #17-049-28
169-33-11 #17-027-7
169-33-5 #17-017-26
169-1-8 #1-073-55
169-1-2 #1-073-39B
169-1-5 #1-073-52A
169-33-1 #17-015-4

AIR MAIL

Mr. Edward W. Wadsworth, Clerk
United States Court of Appeals
for the Fifth Circuit
New Orleans, Louisiana

Re: Johnson, United States v. Jackson Parish School Board, No. 23173; Banks, United States v. Claiborne Parish School Board, No. 23192; United States v. Caddo Parish School Board, No. 23274; United States v. Fairfield Board of Education, No. 23331; United States, Brown v. The Board of Education of the City of Bessemer, No. 23335; United States v. Jefferson County Board of Education, No. 23345; United States v. The Bossier Parish School Board, No. 23365

Dear Mr. Wadsworth:

The Briefs for the United States in the seven above-entitled cases, which were filed in your Court and mailed to attorneys of record on April 25, 1965, contain a common footnote which is erroneous. This footnote is numbered and appears in each brief as follows: No. 23173 - note 9, pp. 39-41; No. 23192 - note 10, pp. 39-41; No. 23274 - note 13, pp. 45-47, pp. 34-36; No. 23345 - note 15, pp. 36-38; No. 23365, note 10, pp. 48-50.

Enclosed you will find errata sheets for the briefs in each of these cases containing the footnote in corrected form. Four such sheets for each case are enclosed in order that each of the judges may be provided with one. Would you kindly transmit the sheets to the appropriate judges.

Copies of the sheets are being mailed to all attorneys of record in these cases, as listed below.

I am sorry to have caused you this inconvenience.

Sincerely,

JOHN DOAR
Assistant Attorney General
Civil Rights Division

By:
DAVID L. NORMAN, Chief
Appeals and Research Section

Enclosures

cc: Carl Rachlin, Esq.
38 Park Row
New York, New York

Haskell A. Kassler, Esq.
One State Street
Boston, Mass.

Alvin J. Bronstein, Esq.
603 North Farish St.
Jackson, Miss.

Harris Davis, Esq.
932 Royal St.
New Orleans, La.

cc: (continued)

Collins, Douglas & Elie
2211 Dyrades St.
New Orleans, La.

David H. Hood
2001 Carolina Avenue
Bessemer, Ala.

Teddy Airhart, Esq.
State Capitol Building
Baton Rouge, La.

Hon. Fred L. Jackson
District Attorney
Second Judicial District
Homer, La.

Maurice F. Bishop
Bishop and Carlton
325-29 Frank Nelson Bldg.
Birmingham, Ala.

Hon. John A. Richardson
District Attorney
First Judicial District
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William P. Schuler
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Mr. J. Howard McEniry
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Bessemer, Ala.

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Mr. William H. Baker
Holloway and Baker
Jonesboro, La.

Hon. Jack P.F. Gremillion
Attorney General of the
State of Louisiana
Baton Rouge, La.

Mr. Reid B. Barnes
Lange, Simpson, Robinson
and Somerville
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Mr. Norman C. Amaker
Mr. Jack Greenberg
Legal Defense, NAACP
10 Columbus Circle
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Hon. Louis H. Padgett, Jr.
District Attorney for the
26th Judicial District
Bossier City, La.

Mr. Oscar Adams
1630 Fourth Avenue North
Birmingham, Alabama.

United States Court of Appeals

FIFTH CIRCUIT

EDWARD W. WADSWORTH
CLERK

OFFICE OF THE CLERK

ROOM 408 - 400 ROYAL ST.
NEW ORLEANS, LA. 70130

March 29, 1967

MEMORANDUM TO ALL COUNSEL LISTED BELOW:

Re: No. 23345 - United States of America and Linda Stout, etc. -vs- Jefferson County Board of Education, et al
No. 23173 - Margaret M. Johnson, et al -vs- Jackson Parish School Board, et al
No. 23192 - Yvornia Decarol Banks, et al -vs- Claiborne Parish School Board, et al
No. 23274 - United States of America -vs- Caddo Parish School Board, et al
No. 23331 - United States of America -vs- The Board of Education of the City of Fairfield, et al
No. 23335 - United States of America -vs- The Board of Education of the City of Bessemer, et al
No. 23365 - United States of America -vs- The Bossier Parish School Board, et al
No. 23116 - Clifford Eugene Davis, Jr., et al -vs- East Baton Rouge Parish School Board, et al
No. 23253 - Jimmy Andrews, et al -vs- City of Monroe, Louisiana, et al

---

Gentlemen:

Enclosed is a copy of the Court's opinion on en banc rehearing in the above cases entered this date by the Court.

Very truly yours,

EDWARD W. WADSWORTH, CLERK

By G. F. Ganucheau
G. F. Ganucheau
Chief Deputy Clerk

Enc.
/ej
Mr. Macon L. Weaver
Mr. Oscar W. Adams, Jr.
Mr. Orzell Billingsley, Jr.
Mr. Demetrius C. Newton
Mr. David L. Norman
Mr. Maurice F. Bishop
Mr. John C. Satterfield
Mr. Reid B. Barnes
Mr. Norman C. Amaker
Mr. Charles H. Jones, Jr.
Mr. James M. Nabrit, III

Hon. John Doar, Asst. Atty. Gen.
Mr. A. P. Tureaud
Mr. John A. Richardson
Mr. J. Bennett Johnston, Jr.
Hon. Jack P. F. Gremillion
Mr. Alvin J. Bronstein
Mr. Harris David
Mr. Carl Rachlin
Mr. Fred L. Jackson
Mr. William H. Baker
Mr. Robert F. Collins
Mr. Thomas McFerrin, Sr.

(Continued)

enc.

Mr. Harry Kron, Jr.
Mr. Teddy W. Airhart, Jr.
Mr. John F. Ward
Mr. Stanley E. Tolliver
Mr. William T. Keenan
Mr. William F. Pipes, Jr.
Mr. Albin P. Lassiter
Mr. Harold B. Judell
Mr. William P. Schuler
Mr. William G. Summerville

JOHNSON, MARGARET, M. et al. VS. JACKSON PARISH SCHOOL BOARD et al. 1966

Box 3
Folder 3

ical Society Of Wisconsin

Please Retain Original Order

No. 23173

MARGARET M. JOHNSON, et al,

Appellants,

v.

JACKSON PARISH SCHOOL BOARD, et al,

Appellees

No. 23192

YVORNIA DECAROL BANKS, et al,

Appellants,

v.

CLAIBORNE PARISH SCHOOL BOARD, et al,

Appellees.

No. 23253

JIMMY ANDREWS, et al,

Appellants,

v.

CITY OF MONROE, LOUISIANA, et al,

Appellees.

Appeals from the United States District Court for the Western District of Louisiana.

Before PHILLIPS, Senior Judge*, and JONES and BROWN, Circuit Judges.

BY THE COURT:

IT IS ORDERED that the motion of appellants

*Of the Tenth Circuit, sitting by designation.

to consolidate the above entitled and numbered appeals for the purpose of filing a single brief, be, and the same is hereby denied. The appeals will be set for hearing at the same place and on the same day. Joint briefs may be filed by such of the parties as may desire to do so.

ENTER: March 10, 1966

ORIGINAL FILED: MARCH 10, 1966

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 23,173

JOHNSON, ET AL., APPELLANTS

v.

JACKSON PARISH SCHOOL BOARD, ET AL., APPELLEES

No. 23,192

BANKS, ET AL., APPELLANTS

v.

CLAIBORNE PARISH SCHOOL BOARD, ET AL., APPELLEES

No. 23,274

UNITED STATES OF AMERICA, APPELLANT

v.

CADDO PARISH SCHOOL BOARD, ET AL., APPELLEES

No. 23,331

UNITED STATES OF AMERICA, APPELLANT

v.

FAIRFIELD BOARD OF EDUCATION, ET AL., APPELLEES

No. 23,335

BROWN, ET AL., APPELLANTS

v.

BOARD OF EDUCATION OF THE CITY OF BESSEMER,
ET AL., APPELLEES

No. 23,345

UNITED STATES OF AMERICA, APPELLANT

v.

JEFFERSON COUNTY BOARD OF EDUCATION, ET AL., APPELLEES

No. 23,365

UNITED STATES OF AMERICA, APPELLANT

v.

BOSSIER PARISH SCHOOL BOARD, ET AL., APPELLEES

MOTION TO CONSOLIDATE
AND EXPEDITE APPEALS

The United States moves this Court for the reasons set forth in our accompanying memorandum to consolidate and expedite the appeals in the following cases: Johnson v. Jackson Parish School Board, No. 23,173, Banks v. Claiborne Parish School Board, No. 23,192, United States of America v. Caddo Parish School Board, No. 23,274, United States of America v. Bossier Parish School Board, et al., No. 23,365, appealed from the District Court for the Western District of Louisiana; and United States of America v. Fairfield Board of Education, No. 23,331, Brown v. Board of Education of the City of Bessemer, No. 23,335, United States of America v. Jefferson County Board of Education, no. 23,345, appealed from the District Court for the Northern District of Alabama.

The United States further requests permission to file a consolidated brief in the above mentioned cases in accordance with the suggested briefing schedule set out in the accompanying memorandum.

JOHN DOAR
Assistant Attorney General
Department of Justice
Washington, D. C. 20530

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 23,173

JOHNSON, ET AL., APPELLANTS

v.

JACKSON PARISH SCHOOL BOARD, ET AL., APPELLEES

No. 23,192

BANKS, ET AL., APPELLANTS

v.

CLAIBORNE PARISH SCHOOL BOARD, ET AL., APPELLEES

No. 23,274

UNITED STATES OF AMERICA, APPELLANT

v.

CADDO PARISH SCHOOL BOARD, ET AL., APPELLEES

No. 23,331

UNITED STATES OF AMERICA, APPELLANT

v.

FAIRFIELD BOARD OF EDUCATION, ET AL., APPELLEES

No. 23,335

BROWN, ET AL., APPELLANTS

v.

BOARD OF EDUCATION OF THE CITY OF BESSEMER,
ET AL., APPELLEES

No. 23,345

UNITED STATES OF AMERICA, APPELLANT

v.

JEFFERSON COUNTY BOARD OF EDUCATION, ET AL., APPELLEES

No. 23,365

UNITED STATES OF AMERICA, APPELLANT

v.

BOSSIER PARISH SCHOOL BOARD, ET AL., APPELLEES

MEMORANDUM IN SUPPORT OF
THE MOTION TO CONSOLIDATE AND EXPEDITE

These cases raise questions of fundamental importance to the progress and manner of school desegregation in the Fifth Circuit. Their resolution should provide needed guidance to the district courts in this circuit and should greatly help the process of bringing all school districts within this Court's jurisdiction into conformity with the school desegregation requirements of the Constitution. Additionally, resolution of the issues may well relieve this Court and the district courts of repetitious litigation on the same basic issues. As the Court said in Scott v. Walker, No. 20814 (decided March 31, 1966), consolidation is often appropriate in instances such as this "because of the desirability of achieving uniformity in the handling of the substantial number of cases arising in this Circuit dealing with the same question of law." Slip Op. at 2.

The seven court ordered school desegregation plans here involved govern school districts containing approximately 155,782 school children of whom 59,361 are Negro. At present, under these plans, only 110 Negro children, 0.19% of the Negro school population, are

attending formerly all-white schools (see accompanying affidavit). In none of the districts has there been any faculty desegregation.

In our view, inadequacies in the seven plans have resulted in their failing to achieve the progress in desegregation required by the Constitution, the Supreme Court, the decisions of this Circuit, and the administrative procedures formulated by the Department of Health, Education, and Welfare.

I. The Plans.

a) Louisiana Cases: Four of the plans in question, governing Jackson, Claiborne, Caddo and Bossier Parishes, Louisiana, were approved prior to or near the beginning of the present school year by the District Court for the Western District of Louisiana. Commencing with the 1966-67 school year, initial assignments in desegregated grades are to be made on a free choice basis, reserving to the boards the right to reject a choice if space is available in a "comparable" school closer to the student's home. The plans fail to define procedures governing exercise of choices; for example, the length and time of the choice period are not specified; no provision is made for children who fail to make a choice, or for a second choice if a student's first choice is denied; and adequate notice of the plan is not provided to students and parents. Furthermore, the plans fail to provide for routing transportation as much as is practical to accommodate the choices made by students. No provision is made for desegregation of services, facilities, activities and

programs of the schools involved, and no mention is made of faculty desegregation. Further, because the district court entered its orders before this court rendered its decision of January 26, 1966, in Singleton v. Jackson Municipal Separate School District, No. 22527, it failed to provide that students in the non-desegregated grades have the right to transfer to schools from which they have been excluded by reason of their race.

b) Alabama Cases: The three Alabama plans, involving the Jefferson County, Bessemer, and Fairfield school districts, were approved by the District Court for the Northern District of Alabama prior to the opening of the present school year. In addition to sharing what we urge as the deficiencies of the Louisiana plans in regard to faculty, transfers in non-desegregated grades, and desegregation of services, facilities, activities and programs, the Alabama plans all involve initial assignments of students based on race. As such they are unconstitutional per se.

II. Procedural History.

	Suit Commenced	Plan Approved Over Objections	Appealed	Remanded on Singleton and Price	Amended Plan From Which Appeal is Taken
Bossier	12/2/64	7/28/65	8/5/65	8/17/65	8/20/65
Caddo 1/	5/4/65	8/3/65	---	----	8/20/65
Bessemer	5/24/65	7/30/65	8/5/65	8/17/65	8/27/65
Jackson	6/2/65	----	----	----	10/5/65
Jefferson	6/27/65	7/23/65	8/5/65	8/17/65	8/27/65
Fairfield	7/21/65	----	----	----	8/23/65
Claiborne	8/10/65	TRO denied 8/10/65	10/13/65	8/26/65	10/11/65

1/ Our appeal in the Caddo Parish case is from the district

(Continued)

This Court's decisions in Singleton v. Jackson Municipal Separate School District, 348 F. 2d 729 (June 22, 1965), and Price v. Denison Independent School Board of Education, 348 F. 2d 1010 (July 2, 1965), were made prior to the approval of any plans involved in these cases. Four of the seven cases were specifically remanded to the district courts for reconsideration in light of Singleton and Price. Modifications adopted by the district courts following the remands were limited almost entirely to the number of grades covered by the plans.

III. Basis for Appeal.

These cases involve similar issues concerning the constitutional adequacy of the seven court-approved plans of desegregation. Our appeals from the plans approved below were initially based upon the view that they fell below judicial standards for desegregation existing at the time of their approval, particularly those standards embodied in Singleton and Price, supra. Subsequent cases elaborating the law relating to school desegregation have further widened the gap. Of particular significance are Rogers v. Paul, 382 U.S. 198 (1965), (remanding for prompt hearing on racial faculty assignments); and this Court's second decision in the Singleton case, Singleton v. Jackson Municipal Separate School District, No. 22527 (January 26, 1966). ("In view of the necessity that the Jackson school system be totally desegregated by September 1967, we regard it as essential that the plan provide an

---

1/ (Continued)

court's order denying the United States leave to intervene. However, we hope to raise as well the substantive inadequacies of the Caddo Parish plan.

adequate start toward elimination of race as a basis for employment and allocation of teachers, administrators and other personnel." "[Students who have been racially assigned] have an absolute right, as individuals, to transfer to schools from which they were excluded because of their race"). See also, Kemp v. Beasley, 352 F. 2d 14 ; (C.A. 8, October 27, 1965); Kier v. County School Board of Augusta County, Virginia, 249 F. Supp. 239 (W.D. Va. January 5, 1966).

Moreover, the constitutional inadequacies of the plans here involved have been further highlighted by the recent issuance of revised desegregation guidelines by the Department of Health, Education, and Welfare. The focus of the revised guidelines is primarily on the practical administrative problems of translating the requirements of the Constitution as defined by the courts into desegregation plans that will work. For example, the guidelines answer such questions as "Who can sign the choice forms? What happens if a student fails to make a choice? How long should the choice period be? How may choice forms be returned?" -- questions generally left unanswered, as in these cases, by court-approved desegregation plans. For the most part these guidelines have made significant additions in terms of their detail and emphasis rather than their theory. We will urge to this Court that the revised Health, Education, and Welfare guidelines set forth a sensible and comprehensive method for desegregation in conformity with the requirements of the Constitution, and as such should be used by the courts in framing specific

relief. A number of federal court orders have already been entered which follow the mechanics established by the revised guidelines for eliminating racially segregated schools. Carr, United States v. Montgomery County Board of Education, C.A. No. 2072-N (M.D. Ala., March 22, 1966); Lee, United States v. Macon County Board of Education, C.A. No. 604-E (M.D. Ala., March 11, 1966) (entered by consent); Harris, United States v. Bullock County Board of Education, C.A. No. 2073-N (M.D. Ala., March 11, 1966) (entered by consent); United States v. Lowndes County Board of Education, C.A. No. 2328-N (M.D. Ala., February 11, 1966) (entered by consent); McGhee, United States v. Nashville Special School District No. 1, C.A. No. 962 (W.D. Ark., March 3, 1966) (entered by consent); Beckett, United States v. School Board of the City of Norfolk, Virginia, C.A. No. 2214 (W.D. Va., March 17, 1966) (entered by consent).

IV. Need for Expedition.

We urge upon this Court the importance of expediting the hearing of these seven cases to permit their resolution before the next school year. Once students are in school and faculty hired and assigned, the difficulties of bringing about meaningful compliance compound. Plans which were inadequate last year, resulting as they did in the merest token integration, will continue next year unless this Court reviews them on an expedited basis.

An early resolution of these cases is important in a broader sense as well. This Court reasoned in Singleton that:

> If in some district courts judicial guides for approval of a school desegregation plan are more acceptable to the community or substantially less burdensome than H.E.W. guides, school boards may turn to the federal courts as a means of circumventing the H.E.W. requirements for financial aid.

It is, of course, for the Court to determine the standards governing the desegregation process. But it is also free to decide whether it will follow the administrative guides incorporated in the 1966 guidelines for the implementation of these standards (as was done in the Singleton case), or whether it will leave the district courts to adopt a myriad of procedures of its own or the local board's making. However, regardless of the Court's ultimate resolution of that issue, at least until the ultimate resolution is made, differing administrative procedures will be required by the courts and by H.E.W., with the effects that Singleton recognized. Moreover, an early resolution of these cases would provide needed guidance to the district courts of the Fifth Circuit. More than 90 school districts in the circuit are presently operating under court-approved desegregation plans, virtually all of which must be amended if they are to conform to standards consistent with the recent decisions of this Court and with the H.E.W. guidelines.

V. Briefing Schedule.

For the foregoing reasons, we ask the Court to consolidate these seven cases and hear argument on May 23, 1966. The following briefing schedule would so permit.

We propose that the appellants and appellant-intervenors be required to submit their briefs in all seven cases by April 25, 1966, and that appellees be required to file by May 16, 1966. This schedule would entail delaying slightly the briefs in Caddo, Fairfield, Jefferson, and Bessemer and expediting slightly the briefs in Bossier, Claiborne, and Jackson. The appellees would be given the full briefing time allowed by Rule 24 of this Court's rules.

VI. Other Pending School Cases.

To our best information, there are five other school cases pending appeal to the Court for which argument dates have not yet been set:[2/]

1. Frazier v. East Baton Rouge Parish School Board, No. 23098 -- briefs filed.
2. Davis v. East Baton Rouge Parish School Board, No. 23116 -- record filed.
3. Andrews v. City of Monroe, Louisiana, No. 23252 -- record being printed.
4. Henry v. Clarksdale Municipal Separate School District, No. 23255 -- record filed.
5. Acree v. County Board of Education of Richmond, Georgia, No. 22723 -- appellant's brief filed.

2/ In two school cases, argument dates have already been set:

1. Davis v. Mobile, No. 22759 - April 1, Atlanta.
2. Steele v. Leon Co., Florida, No. 22684 -- week of May 2, Jacksonville.

The United States is not a party to these cases and hence makes no motion concerning them. However, since all involve the constitutional adequacy of court-ordered desegregation, the Court may wish, on its own motion, to set all pending school appeals together.

JOHN DOAR,
Assistant Attorney General.

ST. JOHN BARRETT,
DAVID L. NORMAN,
CHARLES R. NESSON,
Attorneys,
Department of Justice,
Washington, D.C. 20530

APRIL 1966.

A F F I D A V I T

DISTRICT OF COLUMBIA)
)
CITY OF WASHINGTON) SS:

I, St. John Barrett, being first duly sworn, say:

1. I am an attorney for the United States Department of Justice, Civil Rights Division. I am familiar with the issues on appeal and with the underlying facts of the following cases: Johnson v. Jackson Parish School Board, No. 23,173; Banks v. Claiborne Parish School Board, No. 23,192; United States of America v. Caddo Parish School Board, No. 23,274; United States of America v. Fairfield Board of Education, No. 23,331; Brown v. Board of Education of the City of Bessemer, No. 23,335; Stout v. Jefferson County Board of Education, No. 23,345; United States of America v. Bossier Parish School Board, No. 23,365.

2. I am informed and I believe that the statistics under the desegregation plans in the three Alabama cases and the four Louisiana cases are as follows:

	Total Enrollment		Negroes Admitted To Formerly White Schools
	W	N	
Bessemer, Ala.	2,920	5,284	13
Fairfield, Ala.	1,779	2,159	31
Jefferson County, Ala.	45,000	18,000	24
Caddo Parish, La.	30,680	24,467	1
Bossier Parish, La.	11,100	4,400	31
Jackson Parish, La.	2,548	1,609	5
Claiborne Parish, La.	2,394	3,442	5

This affidavit is made in support of the motion made by the United States to consolidate and expedite the cases specified in paragraph 1.

/s/ St. John Barrett
ST. JOHN BARRETT, Attorney
Department of Justice,
Washington, D.C. 20530

Sworn and subscribed before me
on this, the 1st day of
April, 1966.

/s/ George H. Fouche
NOTARY PUBLIC

Seal

My commission expires on _____, 19___.

Certificate of Service

I hereby certify that a copy of the foregoing Motion to Consolidate and Expedite Appeals and the Memorandum in Support of the Motion to Consolidate and Expedite has been served by official United States mail in accordance with the rules of this Court to each of the attorneys in the cases to which the foregoing motion applies addressed as follows:

Hon. Fred L. Jackson
District Attorney,
2nd Judicial District
Homer, Louisiana

Hon. Hal R. Henderson
Assistant District Attorney,
2nd Judicial District
Homer, Louisiana

William H. Baker, Esq.
Holloway and Baker
Jonesboro, Louisiana

Harris David, Esq.
932 Royal Street
New Orleans, Louisiana

Alvin Bronstein, Esq.
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Jackson, Mississippi

Mils Douglas, Esq.
Collins, Douglas and Elie
211 Dryads Street
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Hon. Jack P. F. Gremillion
Attorney General
State Capitol Building
Baton Rouge, Louisiana

Hon. Harry Kron, Jr.
Assistant Attorney General
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930 Giddins-Lane Bldg.,
Shreveport, Louisiana 71101

Hon. Louis H. Padgett, Jr.,
District Attorney for the
26th Judicial District
Bossier Bank Bldg.,
Bossier City, Louisiana

William P. Schuler, Esq.
Assistant Attorney General
State of Louisiana
State Capitol Bldg.,
Baton Rouge, Louisiana

Hon. John A. Richardson
District Attorney
First Judicial District
Caddo Parish Courthouse
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No. 23173

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

MARGARET M. JOHNSON, ET AL.,

APPELLANTS,

UNITED STATES OF AMERICA,

APPELLANT-INTERVENOR,

v.

JACKSON PARISH SCHOOL BOARD, ET AL.,

APPELLEES.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA

BRIEF FOR THE UNITED STATES OF AMERICA, INTERVENOR

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BRIEF FOR THE UNITED STATES

STATEMENT OF THE CASE

Procedural History and Status

This action was filed in the United States District Court for the Western District of Louisiana

on June 2, 1965, by Negro citizens of Jackson Parish, Louisiana, who are fathers of children attending the public schools of the Parish, seeking to enjoin school officials of that Parish from operating a compulsory biracial school system. (R. 2-9)

The defendants (appellees here) filed their Answer asserting that the decision of the United States Supreme Court in the Brown case was erroneous, but also asserting that, in any event, they were fulfilling their obligations under the laws of the United States. They also asserted, by way of answer that although white and Negro students in their district were attending separate schools, they were not operating a "compulsory" segregated system. They further urged that because no Negro students had applied for transfer the plaintiffs had no cause of action. (R. 14-25)

A hearing was held on July 27, 1965, after which the District Court issued a permanent injunction in general terms and ordered the appellees to submit a plan

for the desegregation of Jackson Parish schools commencing with the 1965-66 school year and progressing with "all deliberate speed" until all grades were included. The speed and manner, according to the District Court's order, were to be "in accordance with the requirements set forth by the Fifth Circuit Court of Appeals." The appellees were allowed 30 days to submit one or more alternative plans, and the appellants were given 15 days for objections. The question of desegregation of teaching and administrative personnel was deferred "until the plan for desegregation of pupils, as finally approved, either has been accomplished or has made substantial progress." (R. 26-29)

On August 27, the appellees moved for and were granted a twenty day extension of time within which to file a plan. (R. 29-32)

The plan, which was filed on September 16, set up a procedure, to go into effect after Court approval of the plan (and apparently after 3 weeks newspaper notice) under which students in four grades could transfer to the school of their choice subject to certain limiting criteria. Provision was also

made to include additional grades for the 1966-67 school year and thereafter. All grades would be covered by September 1967. (R. 32-37)

The appellants filed objections to the plan (R. 40-46) and on October 5 the District Court entered an order setting forth a desegregation plan substantially the same as that proposed by the appellees. It considered adequate the initial pupil assignments for the 1965-66 school year and provided for transfers in four grades during the period January 3 to January 7, 1966. All grades were to be covered by the 1967-68 school year. (R. 47-53) 1/

The plaintiffs appealed and on February 7, 1966, the United States moved in this Court to intervene, which motion was granted on March 10.

1/ The Jackson Parish School System consists of 8 white schools with 1,756 white students in grades 1 through 8 and 876 white students in grades 9 through 12, and 4 Negro schools with 1,190 Negro students in grades 1 through 8 and 490 Negro students in grades 9 through 12. There are 132 white teachers employed in the white schools, 76 Negro teachers employed in the Negro schools. (R. 19-20)

The desegregation plans in the court below

The order presently appealed from must be considered against the background of the plan originally submitted by the appellees and of the order entered by the court below substantially approving that plan.

1. Appellees' original plan. The plan submitted by the appellees to the court below on September 16, 1965, provided for newspaper notice advising "that applications for assignment for the first, second, eleventh, and twelfth grades of any school . . . may be made in person at the Jackson Parish School Board Office." (R. 33) The plan also provided that the principals would announce "the above procedures" to all the school children "so that all children who desire to make a transfer to the school of their choice may do so." (R. 33) The plan then went on to provide for application forms for "transfers or assignments" and the criteria by which such applications could be granted or denied. (R. 33-35) The plan was silent with respect to the assignments of students who did not apply or whose applications were denied. Presumably their assignments would remain as before, by race. New students were entitled to

assignment according to their choice to the former all-white school or former all-Negro school closest to their place of residence. (R. 35)

For the 1966-67 school year all initial assignments of pupils to the first, second, third, fourth, ninth, tenth, eleventh and twelfth grades were to be on the basis of choice, reserving to the pupil the right to transfer and reserving to the school board the right to place a pupil in a "comparable" school closer to his residence. (R. 35-36) All grades would be covered by September 1967. (R. 36)

The appellees' plan provided that applications for assignment were to be made in person at the school board office (R. 33), but did not specify when applications were to be filed.

The plan sets forth certain criteria for the granting or denying of applications for transfer or assignment. (R. 34-35) These criteria included, (1) Choice, (2) age, (3) availability of courses, and (4) availability of space. There were no priorities set among these various criteria.

The plan provided that dual school districts on racial lines would be abolished contemporaneously with the application of the plan to the grades reached. (R. 36)

2. Court ordered plan. The court below set out its approved desegregation plan in an order entered on October 5, 1965. (R. 47-53) This plan provided that "All initial pupil assignments made for the school year 1965-1966 will be considered adequate, subject to the following transfer provisions." (R. 47) The plan then provided that students in the first, second, eleventh and twelfth grades could, from January 3, 1966, to January 7, 1966, apply in person, accompanied by parents or guardians, for transfer and reassignment to another school of their choice. (R. 48) "Such transfer will be made in accordance with the procedures pertaining to transfers currently in general use by the Jackson Parish School Board." (R. 48) The plan set out certain criteria to be applied in granting or denying requests for transfer or assignment. They included, (1) Choice, (2) availability of space, (3) age, (4) availability of requested or desired course of study, and (5) availability of a "comparable" school closer to the pupil's residence. (R. 49-50). New students were entitled to assignment according to their choice to the former all-white school or former all-Negro school closest to their residence. (R. 50)

The transfers for the 1965-66 school year were to be effective at the mid term. (R. 50)

For the 1966-67 school year all initial assignments to the first, second, third, fourth, ninth, tenth, eleventh and twelfth grades were to be made on the basis of choice, reserving to pupils the right to apply for transfer and reserving to the school board the right to place a pupil in a "comparable" school closer to his residence. (R. 50-51) No provision is made for the procedures to be followed in making the "initial assignments" except for the statement that, "The method of initial assignment herein provided for will, of course, be subject to all reasonable procedural requirements that may be adopted and promulgated by the Jackson Parish School Board." (R. 52) The same assignment criteria would apply to all grades by the 1967-68 school year. (R. 51)

The court below ordered that dual school districts on racial lines be abolished contemporaneously with the application of the plan to each grade (R. 51), but no provision is made for accomplishing this.

As in the original plan proposed by the appellees, no provision was made for faculty and staff desegregation or for desegregation of services and programs sponsored by the school system.

SPECIFICATIONS OF ERRORS

The order of the district court of October 5, 1965 approving and ordering into effect the plan of desegregation for the Jackson Parish schools errs in that:

1. It fails to include specific provisions guaranteeing true freedom of choice in the administration of the plan.

2. It fails to require desegregation of faculty and staff.

3. It fails to prohibit racial discrmination against Negro students in formerly all-white schools in connection with services, facilities, activities and programs conducted by or affiliated with the school system.

4. It fails to provide for desegregation of the seventh and eighth grades, which are initial grades in secondary schools, for the 1966-67 school year.

5. It fails to provide that Negro students in grades not reached by the plan shall be allowed to transfer to formerly all-white schools upon request.

ARGUMENT

A. The court-ordered plan lacks sufficient specificity.

The order of the court below requires the appellees to effect a transition from a compulsory dual system of schools based upon race to a system in which the choice of the student or his parents shall determine the school of attendance. The need for specificity in the new system should be apparent. Students, parents, school staff and the community at large have long been conditioned to a system in which race is the determining factor. Each school has necessarily acquired the stigma of being either "white" or "Negro." To convert this system, in all of its aspects, to one in which race will no longer be a factor will at best be a difficult process if the new system is to rely for its operation upon the free volition of school patrons and upon administrators who have long been conditioned to the racial system.

This Court recognized these difficulties when in Stell v. Savannah-Chatham County Board of Education, 333 F. 2d 55, 65 (1964), it said:

> The rule is now firmly established in this circuit, Gibson v. Board of Public Instruction of Dade County, Fla., 5 Cir., 1959, 272 F. 2d 763; Evers v. Jackson Municipal Separate School District, supra, that desegregation must be accomplished in the context of all inhibitions, legal or otherwise, serving to enforce segregation having been removed to the extent that Negro pupils are afforded a reasonable and conscious opportunity to apply for admission to any school for which they are otherwise eligible without regard to their race or color, and to have that choice fairly considered by the enrolling authorities. This is the first step. 2/

Thus, as stated by the Court of Appeals for the Fourth Circuit in Wheeler v. Durham City Board of Education, 346 F. 2d 768, 773 (C.A. 4, 1965):

2/ The following language of the District Court for the Western District of Virginia, in Kier v. County School Board of Augusta County, Va., 249 F. Supp. 239, 243, 246 (1966), is equally apt:

> Unquestionably, to be constitutionally acceptable, a freedom of choice plan will impose upon the school boards additional duties not required under a geographic plan. The ground rules must be laid in a way which will not discourage desegregation, and students and their parents must be fully informed of their choices .... Where, as here, the school authorities have chosen to adopt a freedom of choice plan which imposes upon the individual student, or his parent, the duty of choosing in the first instance the school which he will attend (and where the burden of desegregating is imposed upon the individual Negro student or his parent), it is essential that the ground rules of the plan be drawn with meticulous fairness.

> A freedom of choice system, to warrant approval, must operate to prevent discrimination and not merely to correct conditions which have been deliberately created by unlawfully discriminatory procedures. (Emphasis by the court.)

The generality of the language in the plans submitted by the appellees and ordered by the lower court in this case were clearly such as to permit misunderstanding of the specific nature of appellees' obligations. Such misunderstanding cannot only permit evasion, conscious or unconscious, but necessarily breeds further litigation to give specific content to the plan's general provisions.

The order entered by the district court on July 27, 1965, enjoined the appellees from "continuing to assign students to schools with regard to race or color" and from "continuing to operate a compulsory biracial school system in Jackson Parish, Louisiana." This order, properly read, would appear to require the appellees to fully meet their constitutional obligation to eliminate racial discrimination and the vestiges of past racial discrimination in the operation of their schools. In response to this order, however, the appellees submitted a plan which clearly misconceived the extent and nature of their obligations.

The misconception is best shown by the appellees' Answer in this case. After admitting (Paragraphs VI and VII; R. 19-20) that the schools in Jackson Parish are segregated by race, they claim (in Paragraph X; R. 20) that the schools in Jackson Parish are segregated by race, they claim (in Paragraph X; R. 20) that "they have fulfilled all of their obligations and duties under the laws of the United States." Their plan as submitted would have permitted the existing system of assigning pupils to continue indefinitely, subject only to a limited right on the part of students to seek transfer to schools from which they were initially excluded upon the basis of their race. The provision in Paragraph 5 of the plan that "dual school districts on racial lines shall be abolished" is little more than a deceptive verbal ritual.

The district court's Order on Plan for Desegregation of October 5, 1965, did little to disabuse the appellees of their misconceptions regarding the nature of their constitutional duty. It failed to set forth specific procedures that would make it clear that initial assignments were to be made without regard to race and that the burden would not be left upon Negro school patrons to obtain assignments to schools to which white patrons were automatically assigned.

A freedom of choice plan which is non-specific in detail, not only fails to meet legal requirements but will necessarily breed further litigation and encourage multiplicity of appeals. The lack of specificity in the order in this case left a multitude of questions for future litigation. We will now touch on some of these questions.

How shall notice be given students and parents of their rights under the plan in years following the 1965-66 school year? Shall it be by individual, mailed notice? Shall it be by publication in a newspaper? Shall it be by delivering a notice to the students in school? What should be the text of the notice? Should the entire plan be set forth? When should notice be given? Should it be given to all students and parents or only to Negroes? None of these questions is answered in the court's order. Any of them could be a matter of future dispute between the parties.

What type of form should be used when students or parents exercise their choice of schools? How and where should forms be made available to the students and parents? Should they be sent to the parents? What period of time should be allowed for the exercise of the choice? Should there be any time limit? Who must sign the choice form? May the chooser be required to state his reasons for the choice? None of these questions are answered in the order of the lower court, although these mechanics relating to the exercise of the choice must necessarily determine whether a "free" choice is being afforded.

Must a choice form be executed on behalf of every student enrolling in school? Must such a choice be exercised each year? If a yearly choice is not required may it nonetheless be exercised at the option of the student? If a choice is not required on behalf of every student, how will non-choosers be assigned? Will prior racial assignments be automatically continued absent the exercise of a contrary choice? No answer to these questions is found in the court's decree although the answers are vital to a determination of whether the dual racial system is being eliminated.

If limitations of school capacity preclude granting the choice of every student, which students will be given priority to attend the schools of their choice? Will white students who have previously attended particular schools by reason of their race be given preference over Negroes who have been excluded by reason of their race? If not, how will priority be determined? Will it be based upon date of application? Will it be based upon proximity of residence? Will it be based upon level of achievement, availability of transportation, enrollment of brothers or sisters in the same school, or on factors yet to be determined in the discretion of the School Board? These questions, which go to

the very heart of a free choice plan, were left by the district court to future litigation.

What of students whose choice of school must be rejected because of limitation of school capacity? Will they be given a second choice? What will be the basis for such choice? Will they be assigned to the closest school, or, perhaps, to the school having the most unused capacity? Or will they be assigned back to schools which they have previously attended by reason of their race? Again, these questions are unanswered by the district court.

What standards will guide the School Board in rejecting the choice of a student in order to assign him to a "comparable" school that is closer to his residence? What schools are "comparable?" Within the meaning of the order, is a traditionally all-Negro school "comparable" to a traditionally all-white school having substantially equal facilities? In implementing this rule, may the School Board reject the choice of any Negro student seeking enrollment in a traditionally white school that is farther from his residence than the closest Negro school? Again, no answer is to be found in the order of the district court.

Various of the other district courts in the Fifth Circuit have considered and resolved virtually all of the questions just raised. Although it may be that no single district court has considered and resolved all of these questions in the same case, a court clearly could do so with facility by drawing upon the already formulated standards and procedures set forth in the Commissioner's Guidelines. Indeed, in Singleton and Price, this Court has already suggested that the district courts do so. We submit that this was the course that the district court in this case should have followed.

B. The plan fails to contain a provision designed to eliminate the racial segregation of faculty and staff

The Jackson Parish School System contains approximately 208 teachers all of whom are assigned on the basis of race to schools attended by students of the same race as themselves. (R. 20-21)

School districts that have operated dual racial school systems have the obligation under Brown v. Board of Education, 349 U. S. 294 (1955) to "effectuate a transition to a racially non-discriminatory school system."

Racial segregation of teachers as well as segregation of students has traditionally been one of the hall-marks of the dual school system. The transition to a non-discriminatory system cannot be effected until faculty, as well as students, have been desegregated.

Here, the district court, although enjoining the appellees from continuing to operate a bi-racial school system (R. 27), specifically deferred ruling on the question of faculty desegregation "until the plan for desegregation of pupils, as finally approved, either has been accomplished or has made substantial progress." (R. 28-29). This ruling was clearly erroneous.

The inclusion of a provision in the plan designed to eliminate race as a factor in the employment and allocation of faculty and staff at this late date is essential. Singleton v. Jackson Municipal Separate School District, 355 F. 2d 865 (C.A. 5, 1966); Bradley v. School Board, Richmond, Virginia, 382 U.S. 103 (1965); Rogers v. Paul, 382 U.S. 198 (1965). As the Court wrote in Singleton v. Jackson Municipal Separate School District, supra at 870:

> In view of the necessity that the Jackson School system be totally desegregated by September 1967, we regard it as essential that the plan provide an adequate start toward elimination of race as a basis for the employment and allocation of teachers, administrators, and other personnel.

A desegregation plan, if it is to comply with the rule announced in Singleton v. Jackson Municipal Separate School District, supra, must (1) require the Board to cease its practice of hiring and placing teachers on the basis of race and (2) define a program designed to correct the effects of past discriminatory hiring and assignment practices.[3] See the Revised Statement,

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[3] As the Court said in United States v. Duke, 332 F. 2d 759, 768-69 (C.A. 5, 1964):

> An appropriate remedy ... should undo the results of past discrimination as well as prevent future inequality of treatment. A court of equity is not powerless to eradicate the effects of former discrimination.

45 CFR 181.13.[4]

Where a school board is operating under a plan utilizing a freedom of choice (or transfer) method, the desegregation of faculty and staff is particularly important. As the district court said in Kier v. County School Board of Augusta County, Virginia, 249 F. Supp. 239, 246 (W.D. Va. 1966):

> It is not enough to open the previously all-white schools to Negro students who desire to go there while all-Negro schools continue to be maintained as such. Inevitably, Negro children will be encouraged to remain in "their school," built for Negroes and maintained for Negroes with all Negro teachers and administrative personnel. [5] See

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4 / The Department of Health, Education and Welfare recently announced new school desegregation guidelines (31 Fed. Reg. 5623-5634, April 9, 1966). They are cited herein as Revised Statement and appear at the end of this brief.

5 / By maintaining a segregated or substantially segregated faculties and staffs, the Board has, in effect, labeled its schools "white" and "Negro." Brown v. County School Board of Frederick County, Virginia, 245 F. Supp. 546, 560 (W.D. Va. 1965); cf. Baldwin v. Morgan, 287 F.2d 750 (C.A.5, 1961).

Bradley v. School Bd., supra, 345 F.2d at 324 (dissenting opinion). This encouragement may be subtle but it is nonetheless discriminatory. The duty rests with the School Board to overcome the discrimination of the past, and the long established image of the "Negro school" can be overcome under freedom of choice only by the presence of an integrated faculty.

C. The plan fails to guarantee to students who transfer that there will be no racial discrimination or segregation in services, activities, and programs, provided, sponsored, by or affiliated with the school system.

The plan is silent as to the elimination of racial discrimination in services, activities and programs sponsored by or affiliated with the schools to which Negro students may transfer. Valid plans must guarantee the absence of racial discrimination or segregation in connection with all programs related to the student's attendance. 6/ Cf. Singleton v. Jackson Municipal Separate School District, 355 F.2d 865, 870 (C.A. 5, 1966); Revised Statement, 45 CFR 181.14. This is particularly true under a freedom of choice (or transfer) system, for any such discrimination or segregation would inevitably inhibit free choice.

6/ Indeed, before Brown, where the state provided one school for both races, it was prohibited from discriminating on the basis of race in connection with the school services, facilities and programs. McLaurin v. Oklahoma State Regents, 339 U.S. 637 (1950).

It is essential, therefore, that the plan specify the availability of all activities, services and programs on a nonracial basis and provide that any disqualifications or waiting period which might otherwise apply to newly enrolled students will not apply to students exercising their right to obtain a desegregated education. Revised Statement, 45 CFR 181.14 (b) (1). Similarly, if transportation services are furnished, the plan must make ample provisions to guarantee that service will be provided on a nonracial basis. Revised Statement, 45 CFR 181.14 (b) (2).

D. <u>The plan fails to provide for undelayed desegregation of the initial grades in secondary schools</u>

Under the plan, grades seven and eight will not be desegregated until the 1967-68 school year. These grades are initial grades of several secondary schools in Jackson Parish. 7/ Thus, a large percentage of the sixth and seventh grade students in the Parish necessarily begin a new school at the start of the next school year.

7/ According to the Louisiana School Directory - Session 1965-66, Bulletin No. 1047, State Department of Public Education, at pp. 84-85, the grade levels taught at the schools in Jackson Parish are as follows:

<u>White</u>:	Chatham	(1-12)
	Eros	(1-12)
	Hodge	(1-7)
	Jonesboro Elementary	(1-7)
	Jonesboro Hodge High	(8-12)
	Quitman	(1-12)
	Southside	(1-7)
	Weston	(1-12)
<u>Negro</u>:	Hawk	(1-6)
	Jesper Hennison	(1-12)
	Jackson	(7-12)
	Union	(1-7)

Since July 1962, this Court has required that a desegregation plan must clearly provide, without delay, for the admission of new pupils entering the first grade, or coming into the County for the first time, on a nonracial basis. Augustus v. Board of Public Instruction of Escambia County, Florida, 306 F. 2d 862, 869 (1962); Singleton v. Jackson Municipal Separate School District, 355 F. 2d 865, 867 (1966). The rationale for this requirement is that although Brown, for reasons of administrative convenience, permitted school officials to temporarily leave students where they were, it did not allow such officials to add to the existing segregation by racially assigning students who are new to the system. This rationale applies equally to students who are necessarily beginning new schools but who have been in the system in the past. Racial assignment of any student entering a school for the first time "creates" segregation in relation to that school which did not exist before.

E. The plan fails to contain a provision allowing Negro students in non-desegregated grades to transfer to schools from which they have been excluded because of race.

In Singleton v. Jackson Municipal Separate School District, 355 F.2d 865, 869 (C.A. 5, 1966), the Court wrote:

> The school children in still-segregated grades in Negro schools are there by assignment based on their race. This assignment was unconstitutional. They have an absolute right, as individuals, to transfer to schools from which they were excluded because of their race.

It is true that this Singleton decision was rendered after the order of the district court in this case was issued. But, since the Singleton transfer rule is based on a constitutional principle, and is not merely an aspect of transitional relief, it should have been included in the plan. In any event, it is, of course, proper for this Court now to require its inclusion in the plan.

RELIEF

In Singleton v. Jackson Municipal Separate School District, 348 F. 2d 729 (C.A. 5, 1965), this Court said that "The time has come for foot dragging public school boards to move with celerity toward desegregation." The Court also said (348 F. 2d at 731):

> We attach great weight to the standards established by the Office of Education. The judiciary has of course functions and duties distinct from those of the executive department, but in carrying out a national policy we have the same objective. There should be a close correlation, therefore, between the judiciary's standards in enforcing the national policy requiring desegregation of public schools and the executive department's standards in administering this policy. Absent legal questions, the United States Office of Education is better qualified than the courts and is the more appropriate federal body to weigh administrative difficulties inherent in school desegregation plans.
>
> If in some district courts judicial guides for approval of a school desegregation plan are more acceptable to the community or substantially less burdensome than H.E.W. guides, school boards may turn to the federal courts as a means of circumventing the H.E.W. requirements for financial aid. Instead of a uniform policy relatively easy to administer, both the courts and the Office of Education would have to struggle with individual

> school systems on an ad hoc basis. If judicial standards are lower, recalcitrant school boards in effect will receive a premimum for recalcitrance; the more the intransigence, the bigger the bonus.

The Court emphasized that (348 F. 2d at 731). "As to details of the plan, the Board should be guided by the standards and policies announced by the United States Office of Education in establishing standards for compliance with the requirements of Title VI of the Civil Rights Act of 1964."

In Price v. Denison Independent School District, 348 F. 2d 1010, 1013-14 (C.A. 5, 1965), this Court repeated its language in Singleton regarding the weight to be given the standards of the Office of Education and then went on to say:

> More than that, we put these standards to work. To avoid the temptation to recalcitrant or reluctant school systems to seek judicial approval of a token plan as the basis for Federal aid under alternative (1) for court plans, the Court held the Jackson plan inadequate and directed that a plan modeled after the Commissioner of Education's requirements (note 11, supra) be submitted for the fall of 1965-66.
>
> This signals what will be a frequent approach to these cases as they come to District Courts and thereafter this Court. These executive standards, perhaps long overdue, are welcome. To many, both on and off the bench, there was great anxiety in two major respects with the Brown approach. The first was that probably for the one and only time in American

> constitutional history, a citizen -- was compelled to postpone the day of effective enjoyment of a constitutional right. In Ross v. Dyer, 5 Cir., 1963, 312 F. 2d 191, 194, we recognized that under "a stair-step plan Negroes not in the eligible classes continue to suffer discriminatory treatment." That there can be a moratorium on the enjoyment of such rights runs counter to our notions of ordered liberty. Second, this inescapably puts the Federal Judge in the middle of school administrative problems for which he was not equipped and tended to dilute local responsibility for the highly local governmental function of running a community's school under law and in keeping with the Constitution.
>
> By the 1964 Act and the action of HEW, administration is largely where it ought to be--in the hands of the Executive and its agencies with the function of the Judiciary confined to those rare cases presenting justiciable, not operational questions.

The Court of Appeals for the Eighth Circuit in Kemp v. Beasley, 352 F. 2d 14 (C.A. 8, 1965), discussed this Court's ruling in Singleton insofar as it relates to reliance upon the H.E.W. guidelines. While agreeing "that these standards must be heavily relied upon to determine what desegregation plans effectively eliminate discrimination," the Court of Appeals for that circuit equally emphasized the responsibility of a federal court to exercise its own judgment in determining constitutional issues." The court states its conclusion as follows, (352 F. 2d at 19):

> Therefore, to the end of promoting a degree of uniformity and discouraging reluctant school boards from reaping a benefit from their reluctance the courts should endeavor to model their standards after those promulgated by the executive. They are not bound, however, and when circumstances dictate, the courts may require something more, less or different from the H.E.W. guidelines.

Although the Court of Appeals for the Fourth Circuit has not had occasion to consider the effect of the H.E.W. standards, district courts in that circuit have relied on them. See Kier v. County School Board of Augusta County, 249 F. Supp. 239 (W.D. Va., 1966); Wright v. County School Board of Greenville County, Civil Action No. 4263 (E.D. Va., January 27, 1966); Miller v. Clarendon County School District No. 2, Civil Action No. 8752 (D. of S.C., April 21, 1966). In Miller, the most recent of these cases, the District Court for the District of South Carolina said, with reference to the H.E.W. standards:

> Those standards have been adopted and approved generally in other forums in this circuit [citing Kier and Wright]. The orderly progress of desegregation is best served if school systems desegregating under court order are required to meet the minimum standards promulgated for systems that desegregate voluntarily. Without directing absolute adherence to the "Revised Standards" guidelines at this juncture, this court will welcome their inclusion in any new, amended, or substitute plan which may be adopted and submitted.

This case, as well as each of the other school desegregation cases now before this Court, illustrate the need for this Court to review present judicial enforcement methods to the end that the orderly transition to desegregation can be accomplished with a minimum of expenditure of judicial energy and with a maximum correlation between current desegregation standards and current desegregation practices. We suggest that this end can best be realized by the adoption of a specific decree to be entered in these cases by the district courts. This is neither a fundamental change in judicial approach nor a departure from established standards for desegregation. It would place in the courts, as it must under our constitutional system the primary responsibility for declaring the rights of the parties, and it would look to the Office of Education, rather than to the school boards, for administrative guidelines affecting desegregation so that (1) the court will not be "in the middle of school administrative problems," (2) uniformity in solving operational problems may be achieved, and (3) an efficient method of supervising school board performance can be realized.

This Court in cases involving voter discrimination has approved the same type of relief here being urged.

See United States v. Ward 349 F. 2d 795 (C.A. 5, 1965), and United States v. Palmer ___ F. 2d ___ C.A. 5, (No. 21646, decided February 8, 1966). In the Ward case the Court in adopting the former decision there proposed (349 F. 2d at 805) said:

> [G]ood administration suggests that the proposed decree be indicated by an Appendix, not because of any apprehension that the conscientious District Judge would not faithfully impose every condition so obviously implied, but rather because of factors bearing upon administration itself.
>
> It is not possible, or even desirable, of course to achieve absolute uniformity. But in this ever growing class of cases which have their genesis in unconstitutional lack of uniformity as between races, courts within this single circuit should achieve a relative uniformity without further delay.

Similarly in a recent decision involving jury discrimination this Court has emphasized "the desirability of achieving uniformity of the handling of the substantial number of cases arising in this Court dealing with the same questions of law." Scott v. Walker, ___ F. 2d ____ (C.A. 5, No. 20814 decided March 31, 1966).

The necessary function of the court in desegregation cases is to guarantee that methods adopted for desegregation do not fall below constitutional limits. It is not necessary to this function that the courts define every administrative detail necessarily involved

in day-to-day school administration. Under Title VI of the Civil Rights Act of 1964 the Executive Branch of the federal government must guarantee the fair use of federal funds by prescribing the ordinary administrative details inevitably involved in any workable desegregation plan. For the courts to look to the regulations and guidelines of the Office of Education does not involve the abdication of any judicial function, but instead is a rational method of enforcement of law under a uniform national policy.

Those regulations and guidelines are the product of the expertise of the Office of Education. They reflect the experience and knowledge of persons involved in the day-to-day administration of the schools. The courts do not have the staff, the facilities, or the time to undertake with the same precision the function of defining the workings of the desegregation mechanism.

With these considerations in mind we submit to the Court the proposed decree set forth in the appendix filed in connection with this brief and the

six other school desegregation cases before this Court to which the government is a party. The substantive requirements of the proposed decree derive from the Fourteenth Amendment and the decisions of the courts. The administrative details are largely drawn from the HEW Guidelines. 8/

8/ Recent court-approved plans which draw on the new guidelines are: Carr, United States v. Montgomery County Board of Education, Civil Action No. 2072-N (M.D. Ala., March 22, 1966); Lee, United States v. Macon County Board of Education, Civil Action No. 604-E (M.D. Ala., March 11, 1966) (entered by consent); Harris, United States v. Bullock County Board of Education, Civil Action No. 2073-N (M.D. Ala., March 11, 1966) (entered by consent); United States v. Lowndes County Board of Education, Civil Action No. 2328-N (M.D. Ala., February 11, 1966) (entered by consent); McGhee, United States v. Nashville Special School District No. 1, Civil Action No. 962 (W.D. Ark., March 3, 1966) (entered by consent); Beckett, United States v. School Board of the City of Norfolk, Virginia, Civil Action No. 2214 (W.D. Va., March 17, 1966) (entered by consent). And see Miller v. Clarendon County School District No. 2, D.C.S.C., Civil Action No. 8752 decided April 21, 1966.

We have urged that this Court direct the district courts in these seven cases to enter a specific decree along the line proposed herein. The records in these cases fully support such relief. With the use of this method of individual enforcement there will no longer be occasion for the periodic submission by school boards of "desegregation plans," the hearing of objections to the plans and the submission of amended plans. Instead, the school boards will clearly understand their obligations, and will report to the court on a periodic basis. It may be that supplementary enforcement proceedings will occasionally be necessary, but hearings should be less frequent and should produce more effective results in bringing current practices and current standards closer. There will also be a higher probability that desegregation will proceed more uniformly among school districts under court orders and between such school districts and those desegregating on a voluntary basis under the supervision of the Office of Education.

The courts would continue to have the final responsibility for fixing constitutional standards and for compliance with its decrees. The option is

still open to any school board to come into court to prove that extraordinary circumstances compel modification of one or another of the provisions of the decree. The private plaintiffs and the United States also retain their right, as they must, under our constitutional system and Title IV of the Civil Rights Act of 1964, to come into court when necessary to seek modification of or compliance with any provision in the decree.

Special mention should be made of the faculty provisions in the proposed decree and of the district court decisions that have decreed specific and detailed relief on this subject.

Principally within the past year, district courts have been grappling with the problem of framing practical and effective relief for the desegregation of faculty. Some courts in framing their decrees have focused upon the specific results to be reached by reassignment of teachers who had theretofore been assigned solely upon the basis of their race. Dowell v. School Board of Oklahoma City, 244 F. Supp. 971 (W.D. Okla. 1965), Kier v. County School Board of Augusta County, Virginia, 249 F. Supp. 239 (W.D. Va.

1966). The orders entered in these cases required that the defendant school boards assign any employed teachers and reassign already-employed faculty so that the proportion of each race assigned to teach in each school will be the same as the proportion of teachers of that race in total teaching staff in the system, or at least, of the particular school level in which they are employed. This type of relief is justified on the ground that if faculty members had in the past been assigned without regard to race such assignments would, as a matter of mathematical probability, have yielded this same result.

Other district courts in framing their decrees on faculty desegregation have not been specific as to the number of teachers of each race that should be assigned to each school in order to remove the effects of past discriminatory assignments. These courts have focused upon the mechanics to be followed in removing the effect of past discrimination rather than upon the result as such. Thus, in Beckett v. School Board of the City of Norfolk, Civil Action No. 2214 (E.D. Va., 1966); Gilliam v. School Board

of the City of Hopewell, Virginia, Civil Action No. 3554 (E.D. Va. 1966); and Bradley v. School Board of City of Richmond, Civil Action No. 3353 (E.D. Va. 1966), the courts approved consent decrees setting forth in detail the considerations that would control the school administrators in filling faculty vacancies and in transferring already-employed faculty members in order to facilitate faculty integration.[9]

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[9] The faculty provisions in the Hopewell case, which were filed with the district court on April 8, 1966, read as follows:

> The School Board of the City of Norfolk recognizes its responsibility to employ, assign, promote and discharge teachers and other professional personnel of the Norfolk City Public School System without regard to race or color. It further recognizes its obligation to take all reasonable steps to eliminate existing racial segregation of faculty that has resulted from the past operation of a dual school system based upon race or color:
>
> In order to carry out these responsibilities, the School Board has adopted the following program:
>
> 1. Teachers and other professional personnel will be employed solely on the basis of qualifications and without regard to race or color.

(Cont. on following page.)

In yet other cases, the district court, while emphasizing the necessity of affirmative steps to undo the effects of past racial assignments of faculty and while requiring some tangible results,

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9/ (Cont. from preceding page.)

> 2. In the recruitment and employment of teachers and other professional personnel, all applicants and other prospective employees will be informed that the City of Norfolk operates a racially integrated school system and that the teachers and other professional personnel in the System are subject to assignment in the best interest of the System and without regard to their race or color.
>
> 3. The Superintendent of Schools and his staff will take affirmative steps to solicit and encourage teachers presently employed in the System to accept transfers to schools in which the majority of the faculty members are of a race different from that of the teacher to be transferred. Such transfers will be made by the Superintendent and his staff in all cases in which the teachers are qualified and suitable, apart from race or color, for the positions to which they are to be transferred.
>
> 4. In filling faculty vacancies which occur prior to the opening of each school year, presently employed teachers of the race opposite the race that is in the majority in the faculty at the school

(Cont. on following page.)

has not been specific either regarding the mechanics or the specific results to be achieved. See Harris v. Bullock County Board of Education, Civil Action No. 2073-N (M.D. Ala. 1966); United States v. Lowndes Board of Education, Civil Action No. 2328-N (M.D. Ala. 1966); Carr v. Montgomery County Board of

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9/ (Cont. from preceding page.)

where the vacancy exists at the time of the vacancy will be preferred in filling such vacancy. Any such vacancy will be filled by a teacher whose race is the same as the race of the majority on the faculty only if no qualified and suitable teacher of the opposite race is available for transfer from within the System.

5. Newly employed teachers will be assigned to schools without regard to their race or color, provided, that if there is more than one newly employed teacher who is qualified and suitable for a particular position and the race of one of these teachers is different from the race of the majority of the teachers on the faculty where the vacancy exists, such teacher will be assigned to the vacancy in preference to one whose race is the same.

Education, Civil Action No. 2072-N (M.D. Ala. 1966).[10]

10/ In the Montgomery case the court's decree contained the following provisions on faculty desegregation:

> Race or color will henceforth not be a factor in the hiring, assignment, reassignment, promotion, demotion, or dismissal of teachers and other professional staff, with the exception that assignments shall be made in order to eliminate the effects of past discrimination. Teachers, principals, and staff members will be assigned to schools so that the faculty and staff is not composed of members of one race.
>
> In the recruitment and employment of teachers and other professional personnel, all applicants or other prospective employees will be informed that Montgomery County operates a racially integrated school system and that members of its staff are subject to assignment in the best interest of the system and without regard to the race or color of the particular employee.
>
> The Superintendent of Schools and his staff will take affirmative steps to solicit and encourage teachers presently employed to accept transfers to schools in which the majority of the faculty members are of a race different from that of the teacher to be transferred.
>
> Teachers and other professional staff will not be dismissed, demoted, or passed over for retention, promotion, or rehiring on the ground of race or color. In any instance, where one or more teachers or other professional staff members are to be displaced as a result of desegregation or school closings, they shall

(Cont. on following page.)

The proposed decree set forth in the appendix includes a faculty provision in general terms. It does not seem desirable for this Court to compel exact uniformity as to how faculty desegregation should be accomplished in every school district within the Fifth Circuit. The appellate court should not prescribe a detailed faculty provision from which a district court could not depart. District courts should be free to add specifics to meet the particular situation. By its decree, this Court will only be recognizing that there may be differences between large and small school districts and between urban and rural school districts.

At the same time, the decree does require that a reasonable beginning be made and that a reasonable program be achieved in the actual desegregation of the faculty. The decree makes it clear that the school officials are (1) restrained from

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10/ (Cont. from preceding page.)

be transferred to any position in the system where there is a vacancy for which they are qualified.

practicing racial discrimination in the hiring and assignment of new faculty members, and (2) are required to take affirmative steps to correct existing results of past racial assignments.

This, we believe, is the minimum to be required in any school desegregation decree. The district courts, however, would be open to the plaintiff and to the United States to seek more specific relief if the facts warrant it.

CONCLUSION

Deference to local responsbility for the administration of school systems is a long established principle in the law of school desegregation -- one that continues to be valid today. However, we think it disserves the principle of local responsibility to place upon school boards the difficult and technical task of articulating judicial standards and formulating workable mechanics for free choice plans. The result is too often an inadequate plan which necessitates further abrasive involvement of the federal courts

in local school affairs. Instead, we urge the Court to make the legal obligations of local officials as clear as possible and to utilize the expertise of HEW in the formulation of free choice mechanics. Local responsibility can then be turned to the far more productive tasks of administration and performance.

Respectfully submitted,

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REVISED STATEMENT OF POLICIES FOR SCHOOL DESEGREGATION PLANS UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

March 1966

U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Office of Education

Revised Statement of Policies for School Desegregation Plans Under Title VI of the Civil Rights Act of 1964

(Superseding the General Statement of Policies Issued in April 1965—45 CFR, Part 181)

Subpart A—*Applicability of This Statement of Policies*

§ 181.1 Title VI and the HEW Regulation

Section 601 of Title VI of the Civil Rights Act of 1964 provides that:

> No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

As required by Section 602 of Title VI, the Department of Health, Education, and Welfare has issued a Regulation to assure the elimination of discrimination in Federal aid programs it administers. The HEW Regulation was published as Part 80 of Title 45, Code of Federal Regulations (45 CFR Part 80).

§ 181.2 Compliance by School Systems Eliminating Dual School Structure

To be eligible for Federal aid, a school system must act to eliminate any practices in violation of Title VI, including the continued maintenance of a dual structure of separate schools for students of different races. The HEW Regulation recognizes two methods of meeting this requirement: (1) a desegregation order of a Federal court; or (2) a voluntary desegregation plan.

§ 181.3 Purpose of This Statement of Policies

This Statement of Policies applies to public elementary and secondary school systems undergoing desegregation to eliminate a dual school structure. It sets forth the requirements which voluntary desegregation plans must meet for the Commissioner to determine under the HEW Regulation that a plan is adequate to accomplish the purposes of Title VI. This Statement supersedes the "General Statement of Policies Under Title VI of the Civil Rights Act of 1964 Respecting Desegregation of Elementary and Secondary Schools," issued in April 1965 and published as 45 CFR Part 181.

§ 181.4 Initial Demonstration of Compliance

To be eligible for Federal aid, a school system must first assure the Commissioner that it will comply with Title VI and the HEW Regulation. It must submit the form of assurance that meets its circumstances, under §§ 181.5, 181.6, or 181.7 below.

§ 181.5 Systems Without Dual School Structure

(a) *Submission of Form 441.* A school system which does not maintain any characteristic of a dual school structure may initially demonstrate compliance by submitting HEW Form 441. This is an assurance of full and immediate compliance with Title VI.

(b) *Resubmission Not Required.* A school system which has appropriately submitted HEW Form 441 need not submit a new copy with subsequent requests for Federal aid, but need only affirm when requested that the assurance submitted continues in effect.

(c) *Supplementation of Assurance.* The Commissioner may require supplementation of HEW Form 441 when he has reasonable cause to believe that there is a failure to comply with any provision of Title VI or the HEW Regulation.

§ 181.6 Systems Under Federal Court Order for Desegregation

(a) *Submission of Order.* A school system under a Federal court desegregation order which meets the requirements of the HEW Regulation may submit, as evidence of compliance with Title VI, a copy of the court order, together with an assurance that it will comply with the order, including any future modification.

(b) *Resubmission Not Required.* A school system under a court order accepted by the Commissioner need not submit another copy, but must submit any modification not previously submitted.

(c) *Revision of Court Orders.* A school system under a court order for desegregation which is not in accord with current judicial standards is subject to legal action by the Department of Justice, or by the parties to the original suit, to modify the order to meet current standards.

§ 181.7 Systems With Voluntary Desegregation Plans

(a) *Submission of Form 441–B.* A school system with a voluntary desegregation plan must provide an assurance that it will abide by the applicable requirements for such plans contained in this Statement of Policies. Such assurance may be given by submitting HEW Form 441–B to the Commissioner. After April 15, 1966 commitments of funds for new activities will be subject

ral for school systems which have failed to HEW Form 441–B.

Changing Type of Plan. A school system ange from one type of desegregation plan ner if such action would eliminate segrega- d all other forms of discrimination more iously. A school system planning to the type of its plan must submit a new plan the requirements of this Statement of , together with HEW Form 441–B, for a nation by the Commissioner as to the ade- f the plan to accomplish the purposes of I.

Retaining Present Type of Plan. A school with a desegregation plan accepted by the Commissioner need not resubmit its plan if it intends to continue under the same type of plan. If a plan accepted by the Commissioner fails to meet any requirement under this Statement of Policies, the submission of HEW Form 441–B will be deemed to amend the plan so that it will meet such requirement. Amendments to the plan are not to be submitted unless requested. However, certain supporting materials must be submitted, as provided in Subparts B, C, D, and F below.

(d) *Initial Submittal of Plans.* If no desegregation plan has been submitted or accepted for a school system, HEW Form 441–B and a plan meeting the requirements of this Statement of Policies must be submitted.

[§§ 181.8 through 181.10 reserved]

Subpart B—*Basic Requirements for All Voluntary Desegregation Plans*

Various Types of Desegregation Plans

the responsibility of a school system to nd implement a desegregation plan which minate the dual school system and all other f discrimination as expeditiously as pos- No single type of plan is appropriate for ol systems. In some cases, the most ex- us means of desegregation is to close the originally established for students of one rticularly where they are small and inade- nd to assign all the students and teachers to gated schools. Another appropriate meth- reorganize the grade structure of schools lly established for students of different that these schools are fully utilized, on a gated basis, although each school contains rades. In some cases desegregation is ac- hed by the establishment of non-racial nce zones. Under certain conditions, a sed on free choice of school may be a way rtake desegregation. In certain cases the es of Title VI may be most expeditiously lished by a plan applying two or more of egoing procedures to certain schools or dif- grade levels. Based on consideration of all umstances of a particular school system, the ssioner may determine that its desegrega- an is not adequate to accomplish the pur- f Title VI, in which case he may require ption of an alternative plan. In any case he State education agency is pursuing and programs for expediting the elimina- he dual school structure, the Commissioner sider this factor in determining whether ular type of plan is adequate for any given stem in such State.

Student Assignment Practices

VI precludes a school system from any inaction designed to perpetuate or pro- regation or any other form of discrimina- o limit desegregation or maintain what is essentially a dual school structure. Any educational opportunity offered by a school system must be available to students without regard to race, color, or national origin. In particular, any academic tests or other procedures used in assigning students to schools, grades, classrooms, sections, courses of study or for any other purpose must be applied uniformly to all students without regard to race, color, or national origin. Curriculum, credit and promotion procedures must not be applied in such a way as to penalize or hamper students who transfer from one school to another pursuant to a desegregation plan.

§ 181.13 Faculty and Staff

(a) *Desegregation of Staff.* The racial composition of the professional staff of a school system, and of the schools in the system, must be considered in determining whether students are subjected to discrimination in educational programs. Each school system is responsible for correcting the effects of all past discriminatory practices in the assignment of teachers and other professional staff.

(b) *New Assignments.* Race, color, or national origin may not be a factor in the hiring or assignment to schools or within schools of teachers and other professional staff, including student teachers and staff serving two or more schools, except to correct the effects of past discriminatory assignments.

(c) *Dismissals.* Teachers and other professional staff may not be dismissed, demoted, or passed over for retention, promotion, or rehiring, on the ground of race, color, or national origin. In any instance where one or more teachers or other professional staff members are to be displaced as a result of desegregation, no staff vacancy in the school system may be filled through recruitment from outside the system unless the school officials can show that no such displaced staff member is qualified to fill the vacancy. If as a result of desegregation, there is to be a reduction in the total professional staff of the school system, the qualifi-

cations of all staff members in the system must be evaluated in selecting the staff members to be released.

(d) *Past Assignments.* The pattern of assignment of teachers and other professional staff among the various schools of a system may not be such that schools are identifiable as intended for students of a particular race, color, or national origin, or such that teachers or other professional staff of a particular race are concentrated in those schools where all, or the majority, of the students are of that race. Each school system has a positive duty to make staff assignments and reassignments necessary to eliminate past discriminatory assignment patterns. Staff desegregation for the 1966–67 school year must include significant progress beyond what was accomplished for the 1965–66 school year in the desegregation of teachers assigned to schools on a regular full-time basis. Patterns of staff assignment to initiate staff desegregation might include, for example: (1) Some desegregation of professional staff in each school in the system, (2) the assignment of a significant portion of the professional staff of each race to particular schools in the system where their race is a minority and where special staff training programs are established to help with the process of staff desegregation, (3) the assignment of a significant portion of the staff on a desegregated basis to those schools in which the student body is desegregated, (4) the reassignment of the staff of schools being closed to other schools in the system where their race is a minority, or (5) an alternative pattern of assignment which will make comparable progress in bringing about staff desegregation successfully.

§ 181.14 Services, Facilities, Activities, and Programs

(a) *General.* Each school system is responsible for removing any segregation and any other form of discrimination affecting students in connection with all services, facilities, activities and programs (including transportation, athletics, and other extra-curricular activities) that may be conducted or sponsored by or affiliated with the schools of the system.

(b) *Specific Situations.*

(1) A student attending school for the first time on a desegregated basis may not be subject to any disqualification or waiting period for participation in activities and programs, including athletics, which might otherwise apply because he is a transfer student.

(2) If transportation services are furnished, sponsored or utilized by a school system, dual or segregated transportation systems and any other form of discrimination must be eliminated. Routing and scheduling of transportation must be planned on the basis of such factors as economy and efficiency, and may not operate to impede desegregation. Routes and schedules must be changed to the extent necessary to comply with this provision.

(3) All school-related use of athletic fields, meeting rooms, and all other school-related services, facilities, activities, and programs, such as commencement exercises and parent-teacher meetings, which are open to persons other than enrolled students, must be open to all such persons and must be conducted without segregation or any other form of discrimination.

(4) All special educational programs, such as pre-school, summer school and adult education, and any educational program newly instituted, must be conducted without segregation or any other form of discrimination. Free choice desegregation procedures normally may not be applied to such programs.

§ 181.15 Unequal Educational Programs and Facilities

In addition to the changes made in student assignment practices under its desegregation plan, each school system is responsible for removing all other forms of discrimination on the ground of race, color, or national origin. For example, some school systems still maintain small, inadequate schools that were originally established for students of a particular race and are still used primarily or exclusively for the education of students of such race. If the facilities, teaching materials, or educational program available to students in such a school are inferior to those generally available in the schools of the system, the school authorities will normally be required immediately to assign such students to other schools in order to discontinue the use of the inferior school.

§ 181.16 Attendance Outside School System of Residence

No arrangement may be made nor permission granted for students residing in one school system to attend school in another school system in any case (1) where the result would tend to limit desegregation or maintain what is essentially a dual school structure in either system, or (2) where such attendance is not available to all students without regard to race, color, or national origin.

§ 181.17 Official Support for Desegregation Plan

(a) *Community Support.* School officials must take steps to encourage community support and acceptance of their desegregation plan. They are responsible for preparing students, teachers and all other personnel, and the community in general, for the successful desegregation of the school system.

(b) *Information to the Public.* Full information concerning the desegregation plan must be furnished freely to the public and to all television and radio stations and all newspapers serving the community. Copies of all reports on student and staff assignments required under § 181.18 below must be available for public inspection at the office of the Superintendent of the school system.

(c) *Protection of Persons Affected.* Each school system is responsible for the effective implementation of its desegregation plan. Within their authority, school officials are responsible for the protection of persons exercising rights under, or otherwise affected by, the plan. They must take appropriate action with regard to any student or staff member who interferes with the successful operation of the plan, whether or not on school grounds. If officials of the school system are not able to provide sufficient protection, they must seek whatever assistance is necessary from other appropriate officials.

§ 181.18 Reports

(a) *Anticipated Enrollment.* By April 15 of each year, or by 15 days after the close of the spring choice period in the case of plans based on free choice of schools, each school system must report to the Commissioner the anticipated student enrollment, by race, color, or national origin, and by grade of each school, for the following school year. The report submitted for the 1966–67 school year must also include the comparable data for the 1965–66 school year. Any subsequent substantial change in anticipated enrollment affecting desegregation must be reported promptly to the Commissioner.

(b) *Planned Staff Assignments.* By April 15 of each year, each school system must report to the Commissioner the planned assignments of professional staff to each school for the following year, by race, color, or national origin and by grade, or where appropriate, by subject taught or position held. The report for April 15, 1966 must also include the comparable data for the 1965–66 school year. Any subsequent change in planned staff assignments affecting staff desegregation must be reported promptly to the Commissioner.

(c) *Actual Data.* As soon as possible after the opening of its schools in the fall, but in any case within 30 days thereafter, each school system must determine and promptly report to the Commissioner the actual data for the items covered in the reports called for under (a) and (b) above.

(d) *Attendance Outside System of Residence.* The reports called for under (a) and (c) above must include a statement covering (1) all students who reside within the boundaries of the school system but attend school in another system, and (2) all students who reside outside but attend a school within the system. This statement must set forth, for each group of students included in (1) and (2) above, the number of students, by race, color, or national origin, by grade, by school and school system attended, and by school system of residence.

(e) *Consolidation or Litigation .* A school system which is to undergo consolidation with another system or any other change in its boundaries, or which is involved in any litigation affecting desegregation, must promptly report the relevant facts and circumstances to the Commissioner.

(f) *Other Reports.* The Commissioner may require a school system to submit other reports relating to its compliance with Title VI.

§ 181.19 Records

A school system must keep available for not less than three years all records relating to personnel actions, transportation, including routes and schedules, and student assignments and transfers, including all choice forms and transfer applications submitted to the school system. The Commissioner may require retention for a longer period in individual cases.

[§§ 181.20 through 181.30 reserved]

Subpart C—*Additional Requirements for Voluntary Desegregation Plans Based on Geographic Attendance Zones*

§ 181.31 General

A voluntary desegregation plan based in whole or in part on geographic attendance zones must meet the requirements of this Subpart for all students whose assignment to schools is determined by such zones. The general requirement for desegregation plans set forth elsewhere in this Statement of Policies are also applicable.

§ 181.32 Attendance Zones

A single system of non-racial attendance zones must be established. A school system may not use zone boundaries or feeder patterns designed to perpetuate or promote segregation, or to limit desegregation or maintain what is essentially a dual school structure. A school system planning (1) to desegregate certain grades by means of geographic attendance zones and other grades by means of free choice of schools, or (2) to include more than one school of the same level in one or more attendance zones and to offer free choice of all schools within such zones, must show that such an arrangement will most expeditiously eliminate segregation and all other forms of discrimination. In any such case, the procedures followed for the offer, exercise and administration of free choice of schools must conform to the provisions of Subpart D below.

§ 181.33 Assignment to School in Zone of Residence

Regardless of any previous attendance at another school, each student must be assigned to the school serving his zone of residence, and may be transferred to another school only in those cases which meet the following requirements:

(a) *Transfer for Special Needs.* A student who requires a course of study not offered at the school serving his zone, or who is physically handicapped, may be permitted, upon his written application, to transfer to another school which is designed to fit, or offers courses for, his special needs.

(b) *Minority Transfer Policy.* A school system may (1) permit any student to transfer from a school where students of his race are a majority to any other school, within the system, where students of his race are a minority, or (2) assign students on such basis.

(c) *Special Plan Provisions.* A student who specifically qualifies to attend another school pursuant to the provisions of a desegregation plan accepted by the Commissioner may be permitted, upon his written application, to transfer to such other school.

§ 181.34 Notice

(a) *Individual Notice.* On a convenient date between March 1 and April 30 in each year, each school system must distribute, by first class mail, a letter to the parent, or other adult person acting as parent, of each student who is then enrolled, except high school seniors expected to graduate, giving the name and location of the school to which the student has been assigned for the coming school year pursuant to the desegregation plan, and information concerning the bus service between his school and his neighborhood. All these letters must be mailed on the same day. Each letter must be accompanied by a notice, in a form prescribed by the Commissioner, explaining the desegregation plan. The same letter and notice must also be furnished, in person or by mail, to the parent of each prospective student, including each student planning to enter the first grade or kindergarten, as soon as the school system learns that he plans to enroll.

(b) *Published Notice.* The school system must arrange for the conspicuous publication of an announcement, identical with the text of the notice provided for under (a) above, in the newspaper most generally circulated in the community, on or shortly before the date of mailing under (a) above. Publication as a legal notice is not sufficient. Whenever any revision of attendance zones is proposed, the school system must similarly arrange for the conspicuous publication of an announcement at least 30 days before any change is to become effective, naming each school to be affected and describing the proposed new zones. Copies of all material published hereunder must also be given at that time to all television and radio stations serving the community.

(c) *Maps Available to Public.* A street or road map showing the boundaries of, and the school serving, each attendance zone must be freely available for public inspection at the office of the Superintendent. Each school in the system must have freely available for public inspection a map showing the boundaries of its attendance area.

§ 181.35 Reports

(a) *Attendance Zones.* The report submitted under § 181.18(a) by April 15 of each year must be accompanied by a map, which must show the name and location of each school facility planned to be used during the coming school year, the attendance zones for each school in effect during the current school year, and any changes in the attendance zones planned for the coming school year. The map need not be of professional quality. A clipping of each newspaper announcement and any map published under § 181.34 (b) or (c) above must be sent to the Commissioner within three days after publication and, in the case of proposed revisions, must be accompanied by data showing the estimated change in attendance, by race, color, or national origin and by grade, and in the racial composition of the professional staff, at each school to be affected.

(b) *Attendance Outside Zone of Residence.* Whenever a student is permitted to attend a school other than that serving his zone of residence, and whenever a request for such attendance is denied, the school system must retain records showing (1) the school and grade applied for, (2) the zone of the student's residence and his grade therein, (3) the race, color, or national origin of the student, (4) the reason stated for the request, and (5) the reason the request is granted or denied. Whenever the total number of transfers permitted from any school exceeds two percent of the student enrollment at that school, the relevant facts must be reported promptly to the Commissioner.

[§§ 181.36 through 181.40 reserved]

Subpart D—*Additional Requirements for Voluntary Desegregation Plans Based on Free Choice of Schools*

§ 181.41 General

A voluntary desegregation plan based in whole or in part on free choice of schools must meet the requirements of this Subpart for all students whose assignment to schools is determined by free choice. The general requirements for desegregation plans set forth elsewhere in this Statement of Policies are also applicable.

§ 181.42 Who May Exercise Choice

A choice of schools may be exercised by a parent or other adult person serving as the student's parent. A student may exercise his own choice if he (1) is exercising a choice for the ninth or a higher grade, or (2) has reached the age of fifteen at the time of the exercise of choice. Such a choice by a student is controlling unless a different choice

rcised for him by his parent, or other adult acting as his parent, during the period in the student exercises his choice. Each ref- in this Subpart to a student exercising a means the exercise of the choice by a parent h other adult, or by the student himself, as e appropriate under this provision.

Annual Mandatory Exercise of Choice

h student must be required to exercise a free of schools once annually. A student may enrolled or assigned to a school without ex- g his choice, except as provided in § 181.45

Choice Period

eriod of at least 30 days must be provided ercising choice, to commence no earlier than 1 and to end no later than April 30, preced- he school year for which choice is to be sed. The Commisisoner may require an onal period or different dates for a particu- ool system. No preference in school assign- nay be given on the basis of an early exercise ice during the choice period.

Failure To Exercise Choice

ailure to exercise a choice within the choice does not excuse a student from exercising oice, which may be done at any time before nmences school for the year with respect to the choice applies. However, any such late must be subordinated to the choices of stu- who exercised choice during the choice . If by a week after school opens there is udent who has not yet exercised his choice of , he must be assigned to the school nearest me where space is available. Standards for nining available space must be applied uni- y throughout the system.

Letters to Parents, Notices, and Choice Forms

Mailings. On the first day of the choice , each school system must distribute, by first ail, a letter, an explanatory notice, and a form, to the parent or other adult person as parent of each student who is then en- except high school seniors expected to grad- gether with a return envelope addressed to perintendent. The texts for the letter, and choice form to be used must be in a escribed by the Commissioner.

Extra Copies. Extra copies of the letter, the nd the choice form must be freely avail- arents, students, prospective students, and ral public, at each school in the system e office of the Superintendent.

ontent of Choice Form. Unless otherwise ed or required by the Commissioner, each rm, as prepared by the school system for on, (1) must set forth the name and lo- , and the grades offered at, each school, may inquire of the person exercising the ly the name, address, and age of the student, the school and grade currently or most recently attended by the student, the school chosen, the signature of one parent or other adult person serving as parent or, where appropriate under § 181.42 above, the signature of the student, and the identity of the person signing. If necessary to provide information required by §§ 181.18 and 181.19 above, or for other reports required by the Commissioner, the choice form may also ask the race, color, or national origin of the student. No statement of reasons for a particular choice, or any other information, or any witness or other authentication, may be required or requested. No other choice form, including any pupil placement law form may be used by the school system in connection with the choice of a school.

(d) *Return of Choice Form.* At the option of the person completing the choice form, it may be returned by mail or by hand to any school in the school system or to the office of the Superintendent.

(e) *Choices Not on Official Form.* Exercise of choice may also be made by the submission in like manner of any other writing which sufficiently identifies the student and indicates that he has made a choice of a school.

§ 181.47 Prospective Students

Each prospective student, including each student planning to enter the first grade or kindergarten, must be required to exercise a free choice of schools before enrollment. Each such student must be furnished a copy of the prescribed letter, notice, and choice form, by mail or in person, on the date the choice period opens or as soon thereafter as the school system learns that he plans to enroll. Each must be given an opportunity to exercise his choice during the choice period. A prospective student exercising his choice after the choice period must be given at least one week to do so.

§ 181.48 Choice May Not Be Changed

Once a choice has been submitted, it may not be changed for the school year to which it applies, whether during the choice period, after the choice period, or during that school year, except on request (1) in cases meeting the conditions set forth in § 181.50 below, (2) in case of a change of residence to a place where another school serving the student's grade level is closer than the school to which he is assigned under these provisions, and (3) in case of a compelling hardship. A student who cannot enter the school of his choice because the grade he is to enter is not offered at that school must be promptly notified as soon as this is known and must be given the same opportunity to choose another school as is provided a prospective student under § 181.47 above.

§ 181.49 Assignment According to Choice

No choice may be denied in assigning students to schools for any reason other than overcrowding. In cases where overcrowding would result at one or more schools from the choices made, preference

must be given on the basis of the proximity of schools to the homes of students, without regard to race, color, or national origin. No preference may be given to students for prior attendance at a school if such preference would deny other students their free choice of schools under the plan. In cases where this provision would result in unusual difficulty involving, for instance, students not being able to finish their senior year in a particular school, or students being unable to attend school with other members of the same family, or at a school having special courses required by a student, the relevant facts may be brought to the attention of the Commissioner for consideration of alternative procedures. Any student whose choice is denied under these provisions must be notified in writing promptly and given his choice of each school in the system serving his grade level where space is available. Standards for determining overcrowding and available space that are applied uniformly throughout the system must be used if any choice is to be denied. Each student and his parent, or other adult person acting as parent, must be notified in writing of the name and location of the school to which the student is assigned hereunder promptly upon completion of processing his first or any second choice. A school system may, at its option, give preference to any student whose choice is for a school at which students of his race are a minority.

§ 181.50 Transfers for Special Needs

Each student must attend the school to which he is assigned under the foregoing provisions, except that any student who requires a course of study not offered at that school, or who is physically handicapped, may be permitted, upon his written application, to transfer to another school which is designed to fit, or offers courses for, his special needs.

§ 181.51 No Limitation of Choice; Transportation

No factor, such as a requirement for health or birth records, academic or physical examinations, the operation of the school transportation system, or any other factor except overcrowding, may limit or affect the assignment of students to schools on the basis of their choices. Where transportation is generally provided, buses must be routed to the maximum extent feasible so as to serve each student choosing any school in the system. In any event, every student choosing either the formerly white or the formerly Negro school (or other school established for students of a particular race, color, or national origin) nearest his residence must be transported to the school to which he is assigned under these provisions, whether or not it is his first choice, if that school is sufficiently distant from his home to make him eligible for transportation under generally applicable transportation rules.

§ 181.52 Officials Not To Influence Choice

No official, teacher, or employee of the school system may require or request any student or prospective student to submit a choice form during the choice period other than by the prescribed letter, notice, and choice form. After the choice period, the school system must make all reasonable efforts to obtain a completed choice form from any student who has not exercised a choice. However, at no time may any official, teacher, or employee of the school system, either directly or indirectly, seek to influence any parent, student, or any other person involved, in the exercise of a choice, or favor or penalize any person because of a choice made. Information concerning choices made by individual students or schools to which they are assigned may not be made public.

§ 181.53 Public Notice

On or shortly before the date the choice period opens, the school system must arrange for the conspicuous publication of a notice describing the desegregation plan in the newspaper most generally circulated in the community. The text of the notice must be in a form prescribed by the Commissioner. Publication as a legal notice is not sufficient. Copies of this notice must also be given at that time to all radio and television stations serving the community. Any other announcement published by the school system concerning enrollment, such as might be made in connection with scheduling pre-enrollment procedures for prospective first grade students, must (1) state clearly that under the desegregation plan a choice of school is required for each student whose choice has not yet been exercised, (2) describe and state where copies of the prescribed letter, notice and choice form may be freely obtained in person, or by letter or telephone request, and (3) state the period during which the choice may be exercised.

§ 181.54 Requirements for Effectiveness of Free Choice Plans

A free choice plan tends to place the burden of desegregation on Negro or other minority group students and their parents. Even when school authorities undertake good faith efforts to assure its fair operation, the very nature of a free choice plan and the effect of longstanding community attitudes often tend to preclude or inhibit the exercise of a truly free choice by or for minority group students.

For these reasons, the Commissioner will scrutinize with special care the operation of voluntary plans of desegregation in school systems which have adopted free choice plans.

In determining whether a free choice plan is operating fairly and effectively, so as to materially further the orderly achievement of desegregation, the Commissioner will take into account such factors as community support for the plan, the efforts of the school system to eliminate the identifiability of schools on the basis of race, color, or national origin by virtue of the composition of staff or other

nd the progress actually made in elimi-
st discrimination and segregation.
ngle most substantial indication as to
free choice plan is actually working to
the dual school structure is the extent to
egro or other minority group students
act transferred from segregated schools.
hen substantial desegregation actually
der a free choice plan, there is strong
that the plan is operating effectively
, and is currently acceptable as a means
ng legal requirements. Conversely,
free choice plan results in little or no
segregation, or where, having already
some degree of desegregation, it does not
substantial progress, there is reason to
at the plan is not operating effectively
not be an appropriate or acceptable
f meeting constitutional and statutory
nts.
neral matter, for the 1966–67 school year
issioner will, in the absence of other evi-
the contrary, assume that a free choice
viable and effective means of completing
ges of desegregation in school systems in
bstantial percentage of the students have
en transferred from segregated schools.
small degree of desegregation has been
and, on the basis of the free choice regis-
ld in the spring of 1966, it appears that
not be a substantial increase in desegre-
r the 1966–67 school year, the Commis-
ll review the working of the plan and
ally require school officials to take addi-
ions as a prerequisite to continued use of
ice plan, even as an interim device.
ricts with a sizable percentage of Negro
minority group students, the Commis-
ll, in general, be guided by the following
scheduling free choice plans for review:
a significant percentage of the students,
percent or 9 percent, transferred from
d schools for the 1965–66 school year,
nsfers on the order of at least twice that
ge would normally be expected.
a smaller percentage of the students, such
ent or 5 percent, transferred from segre-
ools for the 1965–66 school year, a sub-
ncrease in transfers would normally be
such as would bring the total to at least
percentage for the 1965–66 school year.
a lower percentage of students trans-
the 1965–66 school year, then the rate of
n total transfers for the 1966–67 school
ld normally be expected to be propor-
greater than under (2) above.
no students transferred from segregated
nder a free choice plan for the 1965–66
r, then a very substantial start would
e expected, to enable such a school sys-
h up as quickly as possible with systems
ted earlier. If a school system in these circumstances is unable to make such a start for the 1966–67 school year under a free choice plan, it will normally be required to adopt a different type of plan.

Where there is substantial deviation from these expectations, and the Commissioner concludes, on the basis of the choices actually made and other available evidence, that the plan is not operating fairly, or is not effective to meet constitutional and statutory requirements, he will require the school system to take additional steps to further desegregation.

Such additional steps may include, for example, reopening of the choice period, additional meetings with parents and civic groups, further arrangements with State or local officials to limit opportunities for intimidation, and other further community preparation. Where schools are still identifiable on the basis of staff composition as intended for students of a particular race, color, or national origin, such steps must in any such case include substantial further changes in staffing patterns to eliminate such identifiability.

If the Commissioner concludes that such steps would be ineffective, or if they fail to remedy the defects in the operation of any free choice plan, he may require the school system to adopt a different type of desegregation plan.

§ 181.55 Reports

(a) *Supporting Materials.* Each school system must submit to the Commissioner a copy of the letter, notice, and choice form, all as prepared by the school system for distribution, within three days after their first distribution, and must submit a clipping of all newspaper announcements published in accordance with § 181.53 above within three days after publication.

(b) *Data on Choices Not Being Honored.* In any case, including the case of conflicting choices under § 181.42 above, where a student chooses a school where he would be in a racial minority, and (1) he is to be assigned to a school where he would be in a racial majority, or (2) the school system proposes not to process his choice for any reason, the relevant facts must be reported promptly to the Commissioner.

(c) *Transfers for Special Needs.* Wherever a student is permitted, under §§ 181.48 or 181.50 above, to attend a school other than the school to which he is or would be assigned under the other applicable provisions hereof, and whenever a request for such attendance is denied, the school system must retain records showing (1) the school and grade applied for, (2) the school and grade to be transferred from, (3) the race, color, or national origin of the student, (4) the reason stated for the request, and (5) the reason the request is granted or denied. Whenever the total number of transfers permitted from any school exceeds two percent of the student enrollment at that school, the relevant facts must be reported promptly to the Commissioner.

[§§ 181.56 through 181.60 reserved]

Subpart E—*Miscellaneous Provisions*

§ 181.61 How To Submit Reports

Each report to the Commissioner required under this Statement of Policies must be sent by first class mail addressed to the Equal Educational Opportunities Program, U.S. Office of Education, Washington, D.C., 20202.

§ 181.62 Alternative Administrative Procedures

If an administrative procedure provided for under this Statement of Policies is not administratively feasible in a particular situation, the Commissioner may accept an alternative procedure if he determines that it will accomplish the same purpose.

§ 181.63 Revision of Statement of Policies

The Commissioner may modify this Statement of Policies as may be necessary to accomplish the purposes of Title VI.

§ 181.64 Copies of Documents for State Agencies

Each school system submitting any plan form or report to the Commissioner under this Statement of Policies must also submit a copy of such form or report to the appropriate State education agency.

§ 181.65 Choice Period Already Begun

In the event that any school system with a desegregation plan based on free choice has begun or completed its free choice period for the 1966–67 school year prior to the date of issue of this Statement of Policies, the school system must immediately report to the Commissioner its proposals for adapting its free choice procedures in such a way as to make them substantially conform to the provisions of this Statement of Policies.

§ 181.66 Definitions

As used in this part,

(a) The term "Commissioner" means the U.S. Commissioner of Education or any official acting under assignment or delegation from him to carry out any of his functions under this Statement of Policies.

(b) The term "discrimination" means discrimination on the ground of race, color, or national origin.

(c) The term "dual school structure" means a system of separate school facilities for students based on race, color, or national origin.

(d) The term "HEW Form 441" means the printed document provided for the use of certain school systems by the U.S. Department of Health, Education, and Welfare, entitled "Assurance of Compliance with the Department of Health, Education, and Welfare Regulation under Title VI of the Civil Rights Act of 1964."

(e) The term "HEW Form 441–B" means the printed document provided for the use of certain school systems by the U.S. Department of Health, Education, and Welfare entitled "Assurance of Compliance with the Revised Statement of Policies for School Desegregation Plans Under Title VI of the Civil Rights Act of 1964."

(f) The term "HEW Regulation" means the Regulation issued pursuant to Title VI of the Civil Rights Act of 1964 by the U.S. Department of Health, Education, and Welfare (Part 80, of Title 45, Code of Federal Regulations).

(g) The term "parent" means an adult individual who exercises parental control over, or is otherwise acting as parent of, a student or prospective student.

(h) The term "school official" shall include, but is not limited to, any person who serves on the governing board of a school system, or attends meetings of such board in an official capacity, and all administrative and supervisory personnel of a school system.

(i) The term "school system" means, as the context may require, either (1) a legally constituted school authority (such as a local board of education) which has administrative control of one or more elementary or secondary schools, (2) the geographic area over which any such school authority has administrative control for school purposes, or (3) the schools and facilities over which any such school authority has administrative control.

(j) The term "Statement of Policies" means this Revised Statement of Policies for School Desegregation Plans under Title VI of the Civil Rights Act of 1964.

(k) The term "Title VI" means Title VI of the Civil Rights Act of 1964 (PL 88–352, 42 USC 2000d to 2000d–4).

[§§ 181.67 to 181.70 reserved]

art F—*Desegregation Plans Not Reaching All Grades for the 1966–67 School Year*

portunity to Transfer in Grades Not Reached Plan

school system in which, for the school 67, there are grades not yet reached by egation plan, the school system must ar- students to attend school on a desegre- s in each of the special circumstances n (a), (b), (c), and (d) below. This y must be made available in such a way w, to the maximum extent feasible, the ion procedures in grades generally the plan, according to the type of plan

nsfer for a Course of Study. A student rmitted to transfer to a school in order ourse of study for which he is qualified is not available in the school to which otherwise be assigned on the basis of his or national origin.

nsfer to Attend School With Relative. must be permitted to transfer in order he same school or attendance center as sister, or other relative living in his if such relative is attending a school as a desegregation plan and if such school nce center offers the grade which the uld be entering.

ansfer for Students Required To Go ystem. A student must be permitted to o any school within the system which rade he is to enter if he would otherwise d to attend school outside the system on f his race, color, or national origin.

nsfer for Other Reasons. A student ermitted to transfer to a school other he to which he is assigned on the basis of lor, or national origin if he meets what- rements, other than race, color or na- in, the school system normally applies in student transfers.

udents New to the System

udent who will be attending school in for the first time in the 1966-67 school y grade not yet generally reached by the ion plan must be assigned to school procedures for desegregation that are to to that grade when it is generally the desegregation plan.

neral Provisions Applicable

nt who has transferred to a school under ove, or entered a school under § 181.72 ll be entitled to the full benefits of ove (relating to desegregation of serv- ies, activities and programs) and to any er rights, privileges, and benefits gener- ally conferred on students who attend a school by virtue of the provisions of the desegregation plan.

§ 181.74 Notice

Each school system in which there will be one or more grades not fully reached by the desegregation plan in the 1966–67 school year must add a paragraph describing the applicable transfer provisions at the end of the notice distributed and published pursuant to § 181.34 above or §§ 181.46 and 181.53 above, as is appropriate for the type of plan adopted by the school system. The text of the paragraph must be in a form prescribed by the Commissioner. The school system must make such other changes to the notice as may be necessary to make clear which students will be affected by attendance zone assignments or free choice requirements.

In addition, for the letter to parents required in § 181.46, school systems with free choice plans which have not desegregated every grade must use a letter describing the plan and will enclose with the letter sent to parents of students in grades not desegregated a transfer application instead of a choice form. For the letter to parents required in § 181.34, school systems with geographic zone plans must send to each parent of students in grades not desegregated a letter describing the plan and a transfer application. The text for these letters and the transfer application must be in a form prescribed by the Commissioner.

§ 181.75 Processing of Transfer Applications

Applications for transfer may be submitted on the transfer application form referred to in § 181.74 above or by any other writing. If any transfer application is incomplete, incorrect or unclear in any respect, the school system must make every reasonable effort to help the applicant perfect his application. Under plans based on geographic zones, and under plans based on free choice of schools, the provisions of § 181.42 as to whether a student or his parent may make a choice of school, shall also determine whether a student in a grade not yet generally reached by desegregation may execute a transfer application.

§ 181.76 Reports and Records

In each report to the Commissioner under §§ 181.18, 181.35, and 181.55 above, the school system must include all data, copies of materials distributed and other information generally required, relative to all students, regardless of whether or not their particular grades have been generally reached by the plan. Similarly the system must retain the records provided for under §§ 181.19, 181.35, and 181.55 above with respect to all students.

[§§ 181.77 through 181.80 reserved]

U.S. GOVERNMENT PRINTING OFFICE : 1966 O—210-060

TEXT FOR NOTICE TO BE PUBLISHED IN NEWSPAPERS, DISTRIBUTED WITH LETTERS TO PARENTS, AND OTHERWISE MADE FREELY AVAILABLE TO THE PUBLIC

(As required by § 181.34 of the Statement of Policies)

(School System Name and Office Address)

NOTICE OF SCHOOL DESEGREGATION PLAN UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

THIS NOTICE IS MADE AVAILABLE TO INFORM YOU ABOUT THE DESEGREGATION OF OUR SCHOOLS. KEEP A COPY OF THIS NOTICE. IT WILL ANSWER MANY QUESTIONS ABOUT SCHOOL DESEGREGATION.

1. *Desegregation Plan in Effect*

The _____ public school system is being desegregated under a plan adopted
(Name of school system)
in accordance with Title VI of the Civil Rights Act of 1964. The purpose of the desegregation plan is to eliminate from our school system the racial segregation of students and all other forms of discrimination based on race, color, or national origin. Your school board and the school staff will do everything they can to see to it that the rights of all students are protected and that our desegregation plan is carried out successfully.

2. *Non-Racial Attendance Zones*

Under the desegregation plan, the school each student will attend depends on where he lives. An attendance zone has been established for each school in the system. All students in the same grade who live in the same zone will be assigned to the same school, regardless of their race, color, or national origin and regardless of which school they attend now.

3. *Transfer to School in Another Zone*

A student may transfer from the school to which he is assigned only under the following conditions: [*State here the conditions, if any, under which transfer will be granted. They must be consistent with the transfer provisions stated in § 181.33 of the Statement of Policies.*] Transfers for any other reasons will not be permitted.

4. *Notification of Assignment*

On _____ the parent, or other adult person acting as parent, of each student
(Date)
enrolled in this system will be sent a letter telling him the name and location of the school to which the student will be assigned for the coming school year. The letter will also give information on any school bus service provided for the student's neighborhood. A copy of this notice will be enclosed with each letter. The same letter and notice will be sent out on the above date for all children the school system expects to enter the school system for the first time next year. This includes children entering first grade or kindergarten. [*Delete* "or kindergarten" *if not offered.*] If the school system learns of a new student after the above date, it will promptly send the student's parent such a letter and a copy of this notice.

5. *Maps Showing Attendance Zones*

Maps showing the boundary lines of the attendance zones of every school in the school system are freely available for inspection by the public at the Superintendent's office. Individual zone maps are available at each school.

6. *Revision of Attendance Zones Boundaries*

Any revision of attendance zone boundaries will be announced by a prominent notice in a local paper at least 30 days before the change is effective.

7. *All Other Aspects of Schools Desegregated*

All school-connected services, facilities, athletics, activities and programs are open to each student on a desegregated basis. A student assigned to a new school under the provisions of the desegregation plan will not be subject to any disqualification or waiting period for participation in activities and programs, including athletics, which might otherwise apply because he is a transfer student. All transportation furnished by the school system will also operate on a desegregated basis. Faculties will be de-

gated, and no staff member will lose his position because of race, color, or national origin. This les any case where less staff is needed because schools are closed or enrollment is reduced.

tendance Across School System Lines

No arrangement will be made or permission granted by this school system for any students living e community it serves to attend school in another school system, where this would tend to limit regation, or where the opportunity is not available to all students without regard to race, color, tional origin. No arrangement will be made or permission granted, by this school system for any nts living in another school system to attend public school in this system, where this would tend hit desegregation, or where the opportunity is not available to all students without regard to race, or national origin.

olations To Be Reported

It is a violation of our desegregation plan for any school official or teacher to influence, threaten erce any person in connection with the exercise of any rights under this plan. It is also a violation deral regulations for any person to intimidate, threaten, coerce, retaliate or discriminate against ndividual for the purpose of interfering with the desegregation of our school system. Any person g any knowledge of any violation of these prohibitions should report the facts immediately by or phone to the Equal Educational Opportunities Program, U.S. Office of Education, Washington, 20202 (telephone 202–962–0333). The name of any person reporting any violation will not be sed without his consent. Any other violation of the desegregation plan or other discrimination on race, color, or national origin in the school system is also a violation of Federal requirements should likewise be reported. Anyone with a complaint to report should first bring it to the tion of local school officials, unless he feels it would not be helpful to do so. If local officials do not ct the violation promptly, any person familiar with the facts of the violation should report them diately to the U.S. Office of Education at the above address or phone number.

U.S. GOVERNMENT PRINTING OFFICE : 1966 O—210-097

TEXT FOR NOTICE TO BE PUBLISHED IN NEWSPAPERS, DISTRIBUTED WITH LETTERS TO PARENTS, AND OTHERWISE MADE FREELY AVAILABLE TO THE PUBLIC

(Required by § 181.46 and 181.53 of the Statement of Policies)

(School System Name and Office Address)

NOTICE OF SCHOOL DESEGREGATION PLAN UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

THIS NOTICE IS MADE AVAILABLE TO INFORM YOU ABOUT THE DESEGREGATION OF OUR SCHOOLS. KEEP A COPY OF THIS NOTICE. IT WILL ANSWER MANY QUESTIONS ABOUT SCHOOL DESEGREGATION

1. *Desegration Plan in Effect*

The _____ public school system is being desegregated under a plan adopted in accordance with Title VI of the Civil Rights Act of 1964. The purpose of the desegregation plan is to eliminate from our school system the racial segregation of students and all other forms of discrimination based on race, color, or national origin.

(Name of school system)

2. *Thirty-Day Spring Choice Period*

Each student or his parent, or other adult person acting as parent, is required to choose the school the student will attend next school year. The choice period will begin on _____ and close _____, 1966.

3. *Explanatory Letters and School Choice Forms*

On the first day of the choice period, an explanatory letter and this notice will be sent by first-class mail to the parent, or other adult person acting as parent, of each student then in the schools who is expected to attend school the following school year. A school choice form will be sent with each letter, together with a return envelope addressed to the Superintendent. Additional copies of the letter, this notice and the choice form are freely available to the public at any school and at the Superintendent's office.

4. *Returning the Choice Forms*

Parents and students, at their option, may return the completed choice forms by hand to any school or by mail to the Superintendent's office, at any time during the 30-day choice period. No preference will be given for choosing early during the choice period. A choice is required for each student. No assignment to a school can be made unless a choice is made first.

5. *Choice Form Information*

The school choice form lists the names, locations and grades offered for each school. The reasons for any choice made are not to be stated. The form asks for the name, address and age of the student, the school and grade currently or last attended, the school chosen for the following year, the appropriate signature, and whether the form has been signed by the student or his parent. [*If choice form asks for the student's race, color, or national origin, insert the following sentences*: "The race, color, or national origin of the student is requested for purposes of recordkeeping required by the U.S. Office of Education. The information will not be used in any way to discriminate against the student."] Any letter or other written communication which identifies the student and the school he wishes to attend will be deemed just as valid as if submitted on the choice form supplied by the school system. The names of students and the schools they choose or are assigned to under the plan will not be made public by school officials.

6. *Course and Program Information*

To guide students and parents in making a choice of school, listed below, by schools, are the courses and programs which are not given at every school in this school system.

[*Here list, by schools, each course and program, such as special education, foreign languages, vocational education, science, commercial courses, and college preparatory courses offered at a particular school which is not offered at the same grade level at every other school in the system. It must include courses and programs offered in grades not yet generally reached by the desegregation plan.*]

7. *Signing the Choice Form*

A choice form may be signed by a parent or other adult person acting as parent. A student who has reached the age of 15 at the time of choice, or will next enter the ninth or any higher grade, may sign his own choice form. The student's choice shall be controlling unless a different choice is exercised by his parent before the end of the period during which the student exercises his choice.

8. *Processing of Choices*

No choice will be denied for any reason other than overcrowding. In cases where granting all choices for any school would cause overcrowding, the students choosing the school who live closest to it will be assigned to that school. Whenever a choice is to be denied, overcrowding will be determined by a uniform standard applicable to all schools in the system.

9. *Notice of Assignment, Second Choice*

All students and their parents will be promptly notified in writing of their school assignments. Should any student be denied his choice because of overcrowding he will be promptly notified and given a choice among all other schools in the system where space is available.

10. *Students Moving Into the Community*

A choice of school for any student who will be new to the school system may be made during the spring 30-day choice period or at any other time before he enrolls in school. An explanatory letter, this notice and the school choice form will be given out for each new student as soon as the school system knows about the student. At least seven days will be allowed for the return of the choice form when a choice is made after the spring 30-day choice period. A choice must be made for each student. No assignment to any school can be made unless a choice is made first.

11. *Students Entering First Grade*

The parent, or other adult person acting as parent, of every child entering the first grade, or kindergarten [*delete* "or kindergarten" *if not offered*], is required to choose the school his child will attend. Choices will be made under the same free choice process used for students new to the school system in other grades, as provided in paragraph 10.

12. *Priority of Late Choices*

No choice made after the end of the spring 30-day choice period may be denied for any reason other than overcrowding. In the event of overcrowding, choices made during the 30-day choice period will have first priority. Overcrowding will be determined by the standard provided for in paragraph 8. Any parent or student whose first choice is denied because of overcrowding will be given a second choice in the manner provided for in paragraph 9.

13. *Tests, Health Records and Other Entrance Requirements*

Any academic tests or other procedures used in assigning students to schools, grades, classrooms, sections, courses of study, or for any other purpose, will be applied uniformly to all students without regard to race, color or national origin. No choice of school will be denied because of failure at the time of choice to provide any health record, birth certificate, or other document. The student will be tentatively assigned in accordance with the plan and the choice made, and given ample time to obtain any required document. Curriculum, credit, and promotion procedures will not be applied in such a way as to hamper freedom of choice of any student.

14. *Choices Once Made Cannot be Altered*

Once a choice has been submitted, it may not be changed, even though the choice period has not ended. The choice is binding for the entire school year to which it applies, except in the case of (1) compelling hardship, (2) change of residence to a place where another school is closer, (3) the availability of a school designed to fit the special needs of a physically handicapped student, (4) the availability at another school of a course of study required by the student, which is not available at the school chosen.

15. *All Other Aspects of Schools Desegregated*

All school-connected services, facilities, athletics, activities and programs are open to all on a desegregated basis. A student attending school for the first time on a desegregated basis may not be subject to any disqualification or waiting period for participation in activities and programs, including athletics, which might otherwise apply because he is a transfer student. All transportation furnished by the school system will also operate on a desegregated basis. Faculties will be desegregated, and no staff member will lose his position because of race, color or national origin. This includes any case where less staff is needed because schools are closed or enrollment is reduced.

16. *Attendance Across School System Lines*

No arrangement will be made, or permission granted, by this school system for any students living in the community it serves to attend school in another school system, where this would tend to limit

desegregation, or where the opportunity is not available to all students without regard to race, color or national origin. No arrangement will be made, or permission granted, by this school system for any students living in another school system to attend school in this system, where this would tend to limit desegregation, or where the opportunity is not available to all students without regard to race, color or national origin.

17. *Violations To Be Reported*

It is a violation of our desegregation plan for any school official or teacher to influence or coerce any person in the making of a choice or to threaten any person with penalties or promise favors for any choice made. It is also a violation of Federal regulations for any person to intimidate, threaten, coerce, retaliate or discriminate against any individual for the purpose of interfering with the free making of a choice of school. Any person having any knowledge of any violation of these prohibitions should report the facts immediately by mail or phone to the Equal Educational Opportunities Program, U.S. Office of Education, Washington, D.C., 20202 (telephone 202–962–0333). The name of any person reporting any violation will not be disclosed without his consent. Any other violation of the desegregation plan or other discrimination based on race, color, or national origin in the school system is also a violation of Federal requirements, and should likewise be reported. Anyone with a complaint to report should first bring it to the attention of local school officials, unless he feels it would not be helpful to do so. If local officials do not correct the violation promptly, any person familiar with the facts of the violation should report them immediately to the U.S. Office of Education at the above address or phone number.

U.S. GOVERNMENT PRINTING OFFICE : 1966 O—210-056

TEXT FOR ANNUAL LETTER TO PARENTS

For Use During 30-Day Spring Choice Period

(Required by §181.46 of the Statement of Policies)

(IF SEPARATE SCHOOLS HAVE BEEN MAINTAINED FOR OTHER THAN NEGRO AND WHITE STUDENTS, TEXT IS TO BE ADJUSTED ACCORDINGLY)

(School System Name and Office Address)

Dear Parent: (Date sent)

Our community has adopted a school desegregation plan. We will no longer have separate schools for children of different races. The desegregation plan has been accepted by the U.S. Office of Education under the Civil Rights Act of 1964.

The plan requires *every* student or his parent to choose the school the student will attend in the coming school year. It does not matter which school the student is attending this year, and it does not matter whether that school was formerly a white or a Negro school. You and your child may select any school you wish.

A choice of school is required for each student. A student cannot be enrolled at any school next school year unless a choice of schools is made. This spring there will be a 30-day choice period, beginning ----------, 1966, and ending ----------, 1966.

A choice form listing the available schools and grades is enclosed. This form must be filled out and returned. You may mail it in the enclosed envelope, or deliver it by hand to any school or to the address above any time during the 30-day choice period. No one may require you to file your choice form before the end of the choice period. No preference will be given for choosing early during the choice period.

No principal, teacher or other school official is permitted to influence anyone in making a choice. No one is permitted to favor or penalize any student or other person because of a choice made. Once a choice is made, it cannot be changed except for serious hardship.

Also enclosed is an explanatory notice giving full details about the desegregation plan. It tells you how to exercise your rights under the plan, and tells you how teachers, school buses, sports and other activities are being desegregated.

Your School Board and the school staff will do everything we can to see to it that the rights of all students are protected and that our desegregation plan is carried out successfully.

Sincerely yours,

Superintendent.

U.S. GOVERNMENT PRINTING OFFICE : 1966 O—210-096

TEXT FOR LETTER TO PARENTS

For Use After 30-Day Spring Choice Period

(Required by § 181.46 of the Statement of Policies)

(IF SEPARATE SCHOOLS HAVE BEEN MAINTAINED FOR OTHER THAN NEGRO AND WHITE STUDENTS, TEXT IS TO BE ADJUSTED ACCORDINGLY)

(School System Name and Office Address)

(Date sent)

Dear Parent:

Our community has adopted a school desegregation plan. We will no longer have separate schools for children of different races. The desegregation plan has been accepted by the U.S. Office of Education under the Civil Rights Act of 1964.

The plan requires *every* student or his parent to choose the school the student will attend in the coming school year. It does not matter which school the student might have attended before, and it does not matter whether that school was formerly a white or a Negro school. You and your child may select any school you wish.

A choice of school is required for each student. A student cannot be enrolled at any school next school year unless a choice of schools is made. A choice form listing the available schools and grades is enclosed. This form must be filled out and returned. You may mail it in the enclosed envelope, or deliver it by hand to any school or to the address above any time before _____* No one may require you to file your choice form before that date.
Date

No principal, teacher or other school official is permitted to influence anyone in making a choice. No one is permitted to favor or penalize any student or other person because of a choice made. Once a choice is made, it cannot be changed except for serious hardship.

Also enclosed is an explanatory notice giving full details about the desegregation plan. It tells you how to exercise your rights under the plan, and tells you how teachers, school buses, sports and other activities are being desegregated.

Your school board and the school staff will do everything we can to see to it that the rights of all students are protected and that our desegregation plan is carried out successfully.

Sincerely yours,

Superintendent.

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* Insert in text a date at least seven days after the letter is sent to parent.

U.S. GOVERNMENT PRINTING OFFICE : 1966 O—210-000

TEXT FOR CHOICE OF SCHOOL FORM

(Required by § 181.46 of the Statement of Policies)

(IF SEPARATE SCHOOLS HAVE BEEN MAINTAINED FOR OTHER THAN NEGRO AND WHITE STUDENTS, TEXT IS TO BE ADJUSTED ACCORDINGLY)

(School System Name and Office Address)

(Date sent)

CHOICE OF SCHOOL FORM

This form is provided for you to choose the school your child will attend for the coming school year. It does not matter which school the child has been attending, and it does not matter whether the school you choose was formerly a white or a Negro school. No student can be enrolled without making a choice of school. This form must either be brought to any school or mailed to the Superintendent's office at the address above by ..... If the student is 15 years old by the date of choice, or will be entering the ninth or a higher grade, either the student or his parent may make the choice.

1. Name of Child .....
   Last First Middle
2. Age .....
3. School and grade currently or last attended ..... Grade .....
4. School Chosen (Mark X beside school chosen)

	Name of School	*Grades*	*Location*
	[Here list by name, grades offered, and location each school available. For example:]		
☐	George Washington High School	8–12	Adams St., Jefferson
☐	James Madison Elementary School	1– 7	Monroe St., Jackson

This form is signed by (mark proper box):

Parent ☐

Other adult person acting as parent ☐

Student ☐

Signature .....
Address .....
Date .....

This block is to be filled in by the Superintendent's office, not by person signing.
Is student assigned to school chosen? ☐ Yes ☐ No

If not, explain: .....

U.S. GOVERNMENT PRINTING OFFICE : 1966 O—210-100

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief and Appendix has been served by official United States mail in accordance with the rules of this Court to each of the attorneys for the appellants and the appellees as follows:

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Dated: April 25, 1966.

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IN THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT

Margaret M. Johnson, et al., Appellants, vs. Jackson Parish School Board, et al., Appellees.	No. 23173
Jimmy Andrews, et al., Appellants, vs. City of Monroe, Louisiana, et al., Appellees.	No. 23253
Yvornia Decarol Banks, et al., Appellants, vs. Claiborne Parish School Board, et al., Appellees.	No. 23192

Appeals from the United States District Court for the
Western District of Louisiana.

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In the

UNITED STATES

COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 23173

Margaret M. Johnson, et al.,
Appellants,

vs.

Jackson Parish School Board, et al.,
Appellees.

* * *

No. 23253

Jimmy Andrews, et al.,
Appellants,

vs.

City of Monroe, Louisiana, et al.,
Appellees

* * *

No. 23192

Yvornia Decarol Banks, et al.,
Appellants,

vs.

Claiborne Parish School Board, et al.,
Appellees.

Appeals from the United States District Court for the
Western District of Louisiana.

BRIEF FOR APPELLANTS

STATEMENT OF THE CASE

These are three class suits, each brought against

school districts in Louisiana, and each complaining of the segregated operation of the school systems involved. The complaints were filed between May 27, 1965 and August 10, 1965. In two of the cases, Nos. 23192 and 23253, motions were filed before this Court for temporary injunctive relief, and this Court remanded the appeals to the District Court for consideration in the light of Singleton v. Jackson Municipal Separate School District 355 F.2d 865 (5th Cir., 1966), and Price v. Denison Independent School Board 348 F.2d 1010 (5th Cir., 1965).

Decrees issued in all three cases eventually which ordered an end to the operation of segregated school systems and required the filing of desegregation plans. In no case did the Defendant Appellees appeal from these decrees so these three cases present the undebated factual situation of unconstitutionally segregated school systems, and these cases raise only the question, what should be done to end the abridgement by the defendant school districts of the plaintiffs' constitutional rights.

The three decrees, with minor variations of no substantive effect, are identical. They acknowledge that school programs, curricula, policies, budgets and construction projects can be designed to perpetuate, maintain or support a school system operated on a racially segregated basis; the decrees prohibit manipulation of these aspects of school administration for such a purpose. (Paragraph 1 (e) of the decrees, No. 23173 Tr. 27,

No. 23192, Tr. 28; No. 23253, Tr. 48). They prohibit use of the power to compel school attendance in aid of maintaining a bi-racial school system. (Par. 1 (c), ibid.) They deny the defendant school districts the use of race or color as a basis on which to make pupil assignments or to establish school attendance zones. (Par. 1 (b),(d), ibid.). And they specifically require that the plaintiffs and, assumedly, all those in the classes represented by plaintiffs, i.e. all Negro children attending schools in these districts, be admitted "to the schools which they would attend if they were white." (Par. 1(a)).

The decrees required defendants to file with the Court plans which detail the effective date and nature of the specific measures aimed at achieving these results. The decrees postponed "the question of desegregation of teaching and administrative personnel * * * until the plan for desegregation of pupils, as finally approved, either has been accomplished or has made substantial progress." (Par. 4, ibid.).

I. <u>The Plan in No. 23253, Andrews v. City of Monroe</u>.

In this case defendants stipulated that they would file a plan by October 17, 1965 to become effective in February, 1966. On its effective date grades 1, 2, 11, and 12 were to be desegregated. In September of 1968 or theretofore grades 3, 4, 5, 6, 7, 8, 9, and 10 were to have been desegregated. (Tr. 47). Defendants filed

a plan to become effective for grades 1, 2, 11 and 12 in February of 1966 (Tr. 51), moved to postpone the effective date until September of 1966 (Tr. 71), and the motion was denied. (Tr. 70). They proposed to make their plan effective for grades 3 , 4, 9 and 10 in February of 1967, for grades 7 and 8 in February of 1968, and for grades 5 and 6 in September of 1968.

This Court had remanded this case to the District Court for consideration in the light of Singleton v. Jackson Municipal Separate School District 348 F.2d 729 (5 Cir., June 22, 1965). Prior to Singleton the Office of Education of the Department of Health, Education and Welfare had issued guidelines requiring desegregation of four grades by September of 1965 and of all grades by September of 1967. In Singleton this Court had stated that HEW's administrative findings have great weight for the purpose of assessing administrative difficulties in school desegregation plans, and had ordered the Jackson School District to make its desegregation plan effective for four grades in September of 1965.

Therefore in the City of Monroe case, No. 23253, the plan as filed was six months late for grades 1, 2, 11 and 12, six months late for grades 7 and 8, and 12 months late for grades 5 and 6. Even in regard to so bald and mathematical a matter as calendar timing defendants declined to acknowledge the direction given by this Court.

The plan as filed attempted to reserve unilateral discretion to the defendant school district in particulars which could allow the preservation of a completely segregated school system without in the slightest departing from the plan were it to be filed, viz.::

(1) If the school board determined "unusual circumstances"to exist it could assign a student to any school in the system. (par. 5 (e), Tr. 52-53).

(2) In "unusual circumstances" the sex of the pupil could be the basis for school assignment. (par. 5(j), Tr. 53).

(3) In "unforeseen circumstances" the defendant Board could alter any portion of the plan which had not yet become effective. (par. 12, Tr. 55).

Finally, the plan allowed the defendant Board in its uncontrolled discretion to allow the following factors to override desegregation as a criterion of student school assignment:

(1) <u>The student's age.</u> If, due to disadvantaged home environment, poor physical facilities in the schools he had attended, lack of school libraries, or exposure to substandard teachers, the student had failed to pass qualifying examinations and had been required to repeat one or more years of schooling, under the plan he thereby had forfeited his right to equal protection

of the laws of the school district. (par. 5(b), Tr. 52).

(2) The "availability" for him of a schedule of courses necessary for his qualification to graduate. Obviously no student should be assigned to a school where the courses he needs are not taught. It is quite a different thing to speak of the "availability" of courses, because this is a function of scheduling classes (determining what teachers will teach in what class rooms, and how many pupils each will teach) and of sectioning classes (the assignment of individual students to class rooms at the hours and in the numbers which conform to the class schedule). It is the proper function of class scheduling and sectioning to service adequately the pupils who are assigned to a school. It is a perversion of school management to assign pupils to a school so as to conform to a predetermined formula of class scheduling and sectioning. (par. (c), Tr. 52).

(3) The "availability of * * * physical facilities." As noted below the school board plan is a "voluntary" one. This means that the Negro students and their parents must engage in a guessing game as to what schools have room for them in the school system. If they make their collective and unorganized guesses wrongly, then their failure to diagnose the existence of "available" facilities deprives them of equal protection under the laws of the school districts. White students run no such gamut of gamesmanship. (par. 5(d), Tr. 52).

(4) Unless in "unusual circumstances", as mentioned above, Negro students must attend the school nearest their home. (par. 5(e), Tr. 52-53). This takes no account of population density in a school zone; it is therefore bad from the point of view of efficient school district management and overloads schools situated in areas of high population density, i.e. in areas where the disadvantaged reside. Secondly this criterion assures continuation of a bi-racial school system in any school district characterized by bi-racial residential patterns.

(5) Any "reasonable procedural requirements" which the defendant school board may in the future adopt. It is the lesson of the law that substantive rights grow or decline in the interstices of procedural requirements. The only way to assure equal protection under the laws of the defendant school district is to spell out with great particularity the "procedural requirements" on which that protection depends. (par. 5(1), Tr. 53).

The order below on the plan for desegregation (Tr. 63-69) left the plan's deficiencies largely unremedied, viz.:

(A) As to timing, grades 1, 2, 11 and 12 remained the same; grades 3, 4, 9, and 10 were accelerated from February, 1967 to September, 1966; grades 7 and 8 were accelerated from February of 1968 to September

of 1967; and grades 5 and 6 were accelerated from September of 1968 to September of 1967. This schedule concededly brought the defendants' calendar into conformity with HEW guidelines of April, 1965 published in 45 CFR Part 181. However, the latest edition of these Guidelines, March, 1966, 45 CFR 181.54(1), contemplate a student body which, in September of 1966, will be approximately 20% desegregated. The proposed plan will affect eight of twelve grades on a voluntary basis. To comply with current HEW timetables, at least 30% of the students involved would have to apply for voluntary transfers adequately to desegregate the system. The remaining provisions of the order below make this seem unlikely.

(B) The student's age, availability of courses, availability of facilities, and "reasonable procedural requirements" remain barriers which the student must penetrate before he can obtain equal protection of the laws.

(C) The "free choice" is severely limited in that the Board retains complete discretion to assign the student to a school "closer to his residence" than that of his choice if the closer school is "comparable" (paragraphs 2 and 3 of the order, Tr. 67-68).

(D) The Court's order denies the defendant Board discretion to frustrate desegregation in "unusual" or "unforeseen" circumstances.

Two important aspects both of the Board's plan and the District Court's order remain to be discussed. They both rely on student choice of school as the basis for desegregation, and each requires the student and his parent to designate that choice by "applying in person" at a school board office.

The currently effective HEW desegregation guidelines require of free choice plans that:

(1) Choice application forms must be furnished all students, regardless of race or color, annually via the mails. The order herein permits the defendant Board to issue such application forms at a Board office rather than to distribute them by mail. (45 CFR 181.46(a); par. 1(c), Tr. 64).

(2) They /prescribe the content of the choice application form and prohibit requiring the student to give a reason for his choice. (45 CFR 181.46(c)). The order herein includes neither the prescribed content nor the prohibition.

(3) They /permit the student to file his application by mail. (45 CFR 181.46(d)0. The order herein requires him to appear in person with his parent or next friend at a Board office in order to file it. (par. 1(a), Tr. 64).

(4) "No choice may be denied in assigning students to schools for any reason other than overcrowding." (45 CFR 181.49). The order herein allows the defendant Board to deny the student's choice for many reasons other than overcrowding, as outlined above.

Relevant to the liklihood of success of a free choice desegregation plan in the City of Monroe is a remarkable series of pleadings in the transcript. At page 27 a motion is set out, signed pro sese, by Mrs. Etta Mae Andrews, and O'Dell Willis, parents of two of the original plaintiffs, in which these two women advise that they are "appearing in proper person" and "have discharged and do hereby affirm the discharge of all counsel and attorneys heretofore enrolled of record as their attorneys in this Court." They moved "that these proceedings be now dismissed in their entirety in this Court * * * and pray for all orders necessary and appropriate thereto." Although they proceeded apparently without the help of counsel, the inference is compelling that they had the help of an attorney in drafting this language and taking this measure, and that that attorney could not disclose his identity by putting his signature to their motion. At page 42 of the transcript the unrebutted and extra-ordinary information is to be found that this motion had been "filed at the instigation and under the influence of the defendants," who evidently approached these plaintiffs without advising plaintiffs' attorneys, supplied plaintiffs

with the legal language for their motion, and allowed the District Court to entertain this motion without advising the Court that the motion had been filed "at the instigation and under the influence" of the Board of Education of the City of Monroe.

Subsequently Mrs. Andrews and her son retracted this motion (Tr. 42). At the hearing defendants went so far as to call Mrs. Odell Willis, the former plaintiff, as defendants' witness (Tr. 86), and to elicit from her that she still desired her complaint to be dismissed. (Tr. 88).

In a community where a pair of plaintiffs in a desegregation case can be subjected to this sort of coercion a "free choice" desegregation plan, offers little promise of success.

II. The Plan in No. 23192, Banks v. Claiborne Parish School Board.

The order below displays the same merits and deficiencies as that in the City of Monroe case, and the terminology is virtually identical. The plan which defendants filed is set out at Tr. 31-36, and the order at Tr. 45-52.

III. The Plan in No. 23173, Johnson v. Jackson Parish School Board.

The order here is the same as the others and is

reported at Tr. 47-53, and the proposed plan at Tr. 32-37.

SPECIFICATIONS OF ERROR

1. The District Court erred in approving a desegregation plan that:

(a) Desegregates too slowly;

(b) Allows student age, availability of courses and availability of facilities, and procedural requirements to override equal protection of the laws as a criterion of student assignment to schools;

(c) Fails to define comparability of schools, but allows such comparability to defeat a student's choice of school;

(d) Allows the defendant Board to assign students in accordance with the zone of their residence without regard to the existence of segregated neighborhoods;

2. The District Court erred in approving a freedom of choice plan in communities where it has not been demonstrated that there is no community hostility to desegregation.

3. The District Court erred in approving a freedom of choice desegregation plan which:

(a) Requires applicants to procure school assignments applications at the school board office;

(b) Fails to prescribe the contents of the choice application form;

(c) Requires filing of the form in person by the student and his parent at a school board office.

ARGUMENT

I. The relevance of HEW Education Office guidelines.

Any Federal agency empowered to extend Federal assistance may issue regulations effectuating assurance that no one on the ground of race, color, or national origin is denied benefits of or is subjected to discrimination under the program receiving Federal assistance. Title 42 U.S.C. sec. 2000d & 2000d-1 (Civil Rights Act of 1964, Title VI). The Office of Education of the Department of Health, Education and Welfare has issued such regulations. They prohibit discrimination on the ground of race or color under any HEW-assisted program (45 CFR 80.3(a)) and allow a secondary or elementary school system to qualify under this regulation if it has filed an acceptable desegregation plan (45 CFR 80.4(c)). In 45 CFR 80.8, 80.9, 80.10, and 80.11 the HEW regulation provides for issuance of orders suspending Federal aid in the event of non-compliance, hearings to take evidence as the basis of findings supporting such orders, appellate procedures for review within the agency, and judicial review thereafter.

HEW has supplied a public statement of the policies

the Department will follow in assessing the adequacy of desegregation plans in 45 CFR, Part 181, entitled "Revised Statement of Policies for School Desegregation Plans under Title VI of the Civil Rights Act of 1964." The latest such statement of policies, called guidelines for short, issued March, 1966.

The Court has asked that briefs supply advice on the extent to which it is permissible for the Court to give weight to or rely on these guidelines in judging the adequacy of desegregation plans. If HEW could enforce its regulations directly by a cease-and-desist order it would be not only permissible but perhaps also mandatory for the Court to give the guidelines weight under the doctrine of primary agency jurisdiction. United States v. Western Pacific Railroad Co. 352 U. S. 59 (1956).

> "The doctrine of primary jurisdiction, like the rule requiring exhaustion of administrative remedies, is concerned with promoting proper relationships between the courts and administrative agencies charged with particular regulatory duties. 'Exhaustion' applies where a claim is cognizable in the first instance by an administrative agency alone; judicial interference is withheld until the administrative process has run its course. 'Primary jurisdiction,' on the other hand, applies where a claim is originally cognizable in the courts, and comes into play whenever enforcement of the claim requires the resolution of issues which, under a regulatory scheme, have been placed within the special competence of an administrative body; in such a case the judicial process is suspended pending referral of such issues to the administrative body for its views." 352 U. S. at 63-64. (emphasis supplied).

The question, then, is whether HEW's Office of Education

concerning school desegregation
is "charged with particular regulatory duties"/or whether school desegregation has become the subject of a"regulatory scheme" which places the resulting issues "within the special competence of" HEW as "an administrative body."

We think the answer is negative. The same local program can become the beneficiary of aid from more than one Federal source. For example, schools may receive aid not only from HEW but also from the Office of Economic Opportunity. The possible plurality of administrative agencies which would possess primary jurisdiction over the same factual controversy conflicts with the concept underlying the doctrine of primary jurisdiction, namely the uniformity which results from reliance on "an administrative body" with national jurisdiction.

In Singleton v. Jackson Municipal Separate School District 348 F.2d 729 (1965) this Court said HEW guidelines should be given great weight because this Court has objectives in common with HEW, because HEW's Office of Education has great expertise in the area of education, because conflicting standards could lead to forum shopping, and because ad hoc performance of the administrative task, school district by school district, would harmfully prolong litigation and postpone the vesting of Constitutional rights. These considerations are valid and indicate that the Courts should give HEW desegregation standards great weight.

However, we must remember that the machinery does

not exist by which Negro victims of unconstitutional discrimination by school systems can obtain review in this Court of HEW standards which fail adequately to compel equal protection of the laws. School districts can obtain a court review of an order which deprives them of Federal aid, but their students have no way to test in a court the propriety of HEW's regulations in this regard.

Therefore this Court, in the enforcement of Constitutional rights and duties, cannot accept or rely on HEW guidelines without testing them in the local context of the rights which this Court is called upon to vindicate. In other words, the Court is under no compulsion to enforce the guide lines. To the extent it does contemplate their enforcement, the Court must first judge them adequate. If they are adequate it is indeed desirable that the Court use them as criteria of judgment for the reasons stated in Singleton.

In the guidelines, 45 CFR 181.54, the last paragraph, the Commissioner of Education reserves the discretion to require a school system to adopt a plan based on something other than free choice when the free choice plan has "defects" which amendments of the plan have "failed to remedy." He can make this determination under the Guidelines with or without a hearing. If without a hearing he relies on reports which the school district must file with him for his factual information. The question does not factually arise in these appeals whether and how this Court should give weight

to such factual determinations by the Commissioner. Any decision to rely on the guidelines ought to make it clear that this question remains undecided.

II. A free choice desegregation plan should not be used in these cases.

The HEW guidelines issue no carte blanche to a school system authorizing adoption of a free choice plan. Instead,

> "It is the responsibility of a school system to adopt and implement a desegregation plan which will eliminate the dual school system and all other forms of discrimination as expeditiously as possible. No single type of plan is appropriate for all school systems. * * * Under certain conditions, a plan based on free choice of school may be a way to undertake desegregation."
> 45 CFR 181.11.

In 45 CFR 181.54 the HEW guidelines indicate that "long-standing community attitudes" adverse to desegregation tend to make a free choice plan inadvisable.

Brown v. Board of Education 349 U. S. 294 (1955) is now eleven years old. The Civil Rights Act of 1964 is now almost two years old. A community which, in the light of these statements of law, has voluntarily come forward with a desegregation plan is one where public conduct does not conflict with a finding that community attitudes will tolerate desegregation. However, school districts which must be dragged, kicking and screaming, to the courts and subjected to a desegregation decree are not communities which believably can be described as willing to desegregate.

If we are going to treat the law as a source of rights, and not a game to play, we must recognize that the best evidence of longstanding community attitudes adverse to desegregation is the need today for a school desegregation decree. There is not a school district in the country that cannot qualify for Federal aid of some sort. Any school district not prevented from doing so by adverse community attitudes would not have jeopardized that aid by failing to make arrangements for desegregation immediately upon passage of the 1964 Civil Rights Act.

None of the three school districts herein involved has done so. Concerning two of them the Government's affidavit attached to its motion to consolidate reflects that free choice under the plans as they have been given effect has produced results of close to zero. Of 1,609 Negro students in Jackson Parish, La.,5 have been admitted to previously white schools. There are 3,442 Negro students in Claiborne Parish, La., and again only 5 have been admitted to previously white schools. In the two school systems there are a total of 9,993 students of whom 10, or one tenth of one per cent have been affected by the free choice desegregation plan. If confirmation were needed of the community attitudes towards desegregation in Louisiana these recent facts amply would supply it.

In fact the statistics which the Government has supplied the Court in the Government brief appendix

concerning school desegregation throughout the Fifth Circuit indicate that very little has been done in any school district in the State to achieve compliance with the law.

Finally, in the City of Monroe we are supplied with the mournful vignette alluded to above of a school board which approaches the parents of students in its system who have retained attorneys to represent them, persuades them to discharge their attorneys, and "instigates" their waiver of constitutional rights to equal protection in the administration of the school district. Can one with honesty conceive that a free choice plan will be effective when administered by such a school board among a community of Negroes so vulnerable to coercion?

In these circumstances a free choice plan is nothi ng more than a scheme which permits the defendant school boards to continue maintaining separate Negro and white schools, with a theoretical provision allowing Negro students to transfer to schools which can become factual only for those who have great courage.

The statistics supplied by the Department of Justice indicate that less than one per cent of the Negroes in the entire State of Louisiana attend desegregated schools. This Court has had repeated occasion to note the atmosphere of violence and intimidation that pervades northern Louisiana. A free choice school desegregation plan is an invitation to

violence -- violence which will affect those most vulnerable to it, namely children in elementary and secondary school. What reason is there for giving a child the choice of school to attend? We don't allow him to choose his teacher or his textbooks. The reason for burdening him with the choice of school is really the hope and confidence that he will find the burden too great to bear and will surrender this portion of his birth right. In an atmosphere of violence this burden of choice becomes intolerable. A free choice desegregation plan amounts essentially to the abdication by a society from its responsibilities. Our responsibilities are to the Constitution and to its guarantee that government will not deny equal protection of its laws. The orders below should be amended to delete the permission they grant the defendant school boards to install free choice desegregation plans.

III. The actual form of the free choice plan approved by the order below errs.

In Bradley v. School Board, City of Richmond, Va., ___ U. S. ___, 34 L. W. 3170 (No. 415, Nov. 15, 1965) the Supreme Court has said, "Delays in desegregation of school systems are no longer tolerable. Goss v. Board of Education 373 U. S. 683, 689; Calhoun v. Latimer 377 U. S. 263, 264-265; see Watson v. City of Memphis 373 U. S. 526." This being true, any plan adopted must take full account of the nature of a public school system, its method of operation, and the hostility of its management in Louisiana towards desegregation. No school district which has resisted desegregation until 1965 is entitled to the presumption that ambiguities in a desegregation plan will be resolved by the district's management in the interest of constitutional rights. There must be no ambiguities, and scope of administrative discretion must be kept to the bare minimum.

The desegregation plans now before the Court essentially continue the assignment of Negro pupils on the same racial basis in use when segregation was compelled by state law, unless modified by free choice. This does not satisfy the affirmative obligation to establish a desegregated school system. Wheeler v. Durham City School Board 346 F.2d 768, 772 (4th Cir., 1965); Bradley v. School Board 345 F.2d 310, 319 (4th Cir., 1965; Nesbit v. Statesville City Board of Education 345 F.2d 333, 334 (4th Cir., 1965). See Buckner v. County School Board 332 F.2d 452 (4th Cir., 1964).

The mechanics of filing a public notice, of distributing applications for transfer, of receiving such applications, and of ruling on the applications are left to school board discretion under the plans herein. At each of these steps of the process school board hostility to desegregation can effectively frustrate it without violating the terms of the orders below. The content of the applications for transfer is not specified, and the HEW guidelines spell out that this is advisable and necessary. If an applicant must specify reasons for desiring transfer, he becomes vulnerable to coercion; if his name can be made public he becomes a target of community hostility. The plans here err because they must adopt procedures which will make it just as easy for Negro students as for white students to enjoy the rights accorded them. Lockett v. Board of Education of Muscogee County 342 F.2d 225, 229 (5th Cir., 1965); Augustus v. Board of Public Instruction of Escambia County 306 F.2d 862 (5th Cir., 1962).

The criteria for denying the so-called free choice are too broad and too vague. HEW guidelines insist that nothing except overcrowding can be a reason for denying choice, and it is essential that this be so. When choice is denied, the applicant for transfer should be given a second choice, and should be allowed to make it in the same manner he made the first choice.

The plans here postpone faculty and staff desegregation and must be modified in this regard. Rogers v. Paul

382 U. S. 198 (1965); Bradley v. School Board of Richmond 382 U. S. 103 (1965); Singleton v. Jackson Municipal Separate School District 355 F.2d 865, 870 (5th Cir., 1966); Kemp v. Beasley 352 F.2d 14, 22-23 (8th Cir., 1965); Kier v. County School Board 349 F. Supp. 239 (W.D., Va.; 1966); Dowell v. School Board of Oklahoma City 244 F. Supp. 971 (W.D., Okla., 1965); cf. Franklin v. School Board of Giles County, No. 10,214, 4th Cir., April 6, 1966.

IV. The remedy that should be accorded.

The Court has asked the parties to brief the question, what means and methods should federal courts follow in making HEW guidelines and policies judicially effective. As we have said above, we believe that these guidelines should be used as a minimum standard which all school districts should meet, but that they cannot become a uniform standard because their beneficiaries have no opportunity to test them through court review, and because constitutional rights must be protected in the context of local situations to all of which the guidelines may not be addressed. Essentially the guidelines describe several types of desegregation plans, place it within the discretion of the Commissioner of education to determine which type of plan is most appropriate, and then prescribe the minimum elements which a type of plan must have to be adequate. If the court were to find that any of the types of plan described in the Guidelines were adequate here, the Court's decree should require that

the plan as implemented should meet the specifications for that type of plan set forth in the guidelines.

The guidelines, however, cannot aid the Court in making the fundamental determination, which type of plan is best to remedy the wrongs complained of. As a means towards this determination we believe that, once a school board has been found guilty of abridging constitutional rights, it should have the burden of going forward with a factual demonstration on a rational basis that the plan selected is the best method of righting the wrongs complained of. The school board should have this initial burden because it has the expertise in the area of education. Plaintiffs then must be afforded an opportunity to test this factual presentation by the school board through cross examination, and to rebut it.

Lest this process become futile, this Court should establish an overall goal of accomplishment which any plan selected must achieve. This goal is to protect Negro children from segregated education. The goal will be achieved whenever the school building and the grade to which they are assigned has no higher a proportion of Negroes assigned to it than is warranted by the proportion of Negroes in the total school district's population. As a practical formula, we believe the maximum proportion of Negroes in any school building and in any grade in that building should be no greater than ten per centage points above the ratio of Negroes to the total population attending the schools in the school district.

Thus, in the City of Monroe, No. 23253, the total student population of the district is 10,909, and 5,457 are Negro. (Tr. 5, 29-30). The ratio of Negro to total students is 50%. In no grade in any school should that ratio rise higher than 60%. In Jackson Parish, No. 23173, there are 4,312 students in the system, 1,680 or 39% of whom are Negro. (Tr. 19-20)/ No grade in any school should contain more than 49% Negro students. In Claiborne Parish, No. 23192, of a total population of 4,951 students, 2067 or 59% are Negro. (Tr. 19-20). No grade should contain more than 69% Negroes.

It is entirely possible that the defendant school board will claim it to be impossible to manage the school system and achieve such ratios, and will simply fail to produce the requisite plan. In that case the Board must be required to introduce in evidence a census of all children in the school system, indicating zones in which they reside, and accompanied by appropriate maps. Faced with such lack of cooperation by the school board, the trial court is then in the same position in which it finds itself when it enforces the law concerning constitutional political apportionment of voting districts, and when the legislature declines to perform its duty to reapportion. Federal courts the country wide have coped with this problem and have had excellent success. It is regrettable that a legislature or a school board will not bring its expertise to bear on an administrative

problem of this nature, but constitutional rights cannot be destroyed by cowardice or laziness in the legislative or administrative branches of the government.

The decree should require a reevaluation of the success of any plan adopted on an annual basis. Using the population figures for the prior school year and the census of children to be assigned to schools for the coming school year, whatever plan adopted must show school and grade populations distributed in accordance with the formula outlined above.

This places the burden and responsibility for school district management where it belongs -- with the school board whose deficiencies are supplemented by the Federal courts. It does not place this burden on those least able and least competent to bear it, namely the Negro school children of Louisiana. This supplies assurance that constitutional rights will be protected,instead of debate about their scope. Essentially this and nothing but this will put an end to the administrative task which now appears about to overwhelm this Court, because temporizing holds forth promise of nothing but a constant recurrence of these cases on appellate review, as plan after plan is found wanting in the basic element which gives it raison d'etre, namely the practical, factual end of segregated education in Louisiana.

CONCLUSION

For the foregoing reasons the order below should be modified to eliminate free choice as a basis for the desegregation plans, and to require that any plan used assure that no grade in any school in the defendant school systems have a Negro population more than ten per centage points greater than the proportion of Negro students in the total school system.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing brief for appellants by mailing a copy thereof, first class mail, in an envelope properly addressed to the following attorneys for appellees and interveners: Messrs. John Doar, Edward L. Shaheen, St. John Barrett, David L. Norman, Frank M. Dunbaugh, Albert S. Pergam, Jack P. F. Gremillion, Fred L. Jackson, William H. Baker, William F. Pipes, Jr., Albin P. Lassiter, and Harold B. Judell.

New York, N. Y., April 30, 1966.

William Q. Keenan

William Q. Keenan

c/o Nill Gleason
219 E 42nd St, N.Y., N.Y.

UNITED STATES COURT OF APPEALS

FIFTH CIRCUIT

EDWARD W. WADSWORTH
CLERK

OFFICE OF THE CLERK

ROOM 408 - 400 ROYAL ST.
NEW ORLEANS, LA. 70130

April 21, 1966

TO ALL COUNSEL LISTED BELOW:

Re: No. 23331. United States vs. The Board of Education of the City of Fairfield, et al.
No. 23335. United States vs. The Board of Education of the City of Bessemer, et al.
No. 23345. United States, et al vs. Jefferson County Board of Education, et al.
No. 23253. Andrews, et al vs. City of Monroe, La., et al
No. 23116. Davis, et al vs. East Baton Rouge Parish School Board, et al.
No. 23098. Frazier vs. East Baton Rouge Parish School Board.
No. 23274. United States vs. Caddo Parish School Board.
No. 23365. United States vs. Bossier Parish School Board.
No. 23173. Johnson vs. Jackson Parish School Board, et al.
No. 23192. Banks vs. Claiborne Parish School Board, et al.
No. 22723. Acree vs. County Board of Education of Richmond County, Georgia, et al.
No. 23255. Henry vs. Clarksdale Municipal Separate School District, et al.

Gentlemen:

Title VI of the Civil Rights Act of 1964 provides that federal agencies administering a grant-in-aid program must see to it that there is no discrimination in any school or facility receiving federal aid. In December 1964 President Johnson promulgated regulations under Title VI directing that no application for federal aid from a school district be approved unless (1) the district promise to comply with outstanding court orders against it, if any, or (2) submit a new desegregation plan satisfactory to the United States Commissioner of Education. April 1965 the Office of Education of the Department of Health, Education and Welfare issued a statement of guidelines and policies to govern that office in approving and disapproving plans submitted by school districts. March 7, 1966, the Office of Education issued revised guidelines for the 1966-67 school year.

The parties are requested to file supplemental briefs discussing the following questions relating to HEW and school segregation

cases:

(1) To what extent, consistent with judicial prerogatives and obligations, statutory and constitutional, is it permissible and desirable for a federal court (trial or appellate) to give weight to or to rely on HEW guidelines and policies in cases before the court?

(2) If permissible and desirable, what practical means and methods do you suggest that federal courts (trial and appellate) should follow in making HEW guidelines and policies judicially effective?

Yours very truly,

EDWARD W. WADSWORTH, CLERK

By Gilbert J. Gremillion
Chief Deputy Clerk

jm

cc:
Mr. Macon L. Weaver
Mr. Maurice F. Bishop
Hon. Nicholas deB. Katzenbach
Hon. John Doar
Messrs. David L. Norman, Brian K. Landsberg and St. John Barrett
Mr. Reid B. Barnes
Mr. J. Howard McEniry
Messrs. Norman C. Amaker and Jack Greenberg
Mr. Oscar W. Adams, Jr.
Mr. George Rogers
Mr. Alvin J. Bronstein
Mr. Stanley E. Tolliver
Mr. Harris David
Mr. William F. Pipes, Jr.
Mr. Albin P. Lassiter
Mr. Harold B. Judell
Messrs. Robert F. Collins, Nils R. Douglas and Lolis E. Elie
Mr. Jesse N. Stone, Jr.
Mr. James Sharp, Jr.
Mr. Carl Rachlin
Mr. Malcolm Farmer, III
Mr. H. L. Harkey, Jr.
Mr. A. P. Tureaud
Mr. John F. Ward, Jr.
Hon. Jack P. F. Gremillion
Messrs. William A. Beck, Jr. and Joe E. Thompson
Mr. John A. Richardson
Mr. D. Robert Owen
Mr. Edward L. Shaheen
Mr. J. Bennett Johnston, Jr.
Mr. Louis H. Padgett, Jr.
Mr. Fred L. Jackson
Mr. William H. Baker
Mr. John H. Ruffin, Jr.
Mr. D. L. Hollowell
Mr. E. D. Fulcher
Mr. Franklin H. Pierce
Mr. Semmes Luckett
Mr. R. Jess Brown
Nr. William H. Maynard

WILLIAM Q. KEENAN
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May 18, 1966

Carl Rachlin, Esq.
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Scholarship, Education and Defense
Fund for Racial Equality, Inc.
150 Nassau Street
New York, New York 10038

Re: Johnson v. Jackson Parish Banks
v. Caliborne Parish Andrews v.
City of Monroe

Dear Carl:

I return all of the papers that you have sent me concerning the above cases.

I am delighted to know I will argue the City of Monroe case May 24.

I will be in New Orleans the night of the 23rd and will stay at the Monteleone.

Yours very truly,

Bill Keenan

William Q. Keenan

~~The test of whether the const'l guarantees~~

(a) This case is not under the Title IV and we are not bound by it

(b) The test of whether the system is desegregated is ~~the result~~ measured by the results of the Board's plan and not by the words of the plan. We ask substantive equality, not procedural equality.

what have we asked for that we have been denied

initial assignment is the question

inherent weakness of freedom of choice
invitation to violence
people

what does plan pay for
faculty
facilities
r/d. transfer even in
non desegregated ~~schools~~ grades

~~the test of satisfaction~~
~~of the~~

D.d Judge Dawkins follow
law

the test of whether

Initial assignment children

EDWARD W. WADSWORTH
CLERK

OFFICE OF THE CLERK
February 10, 1966
ROOM 408 - 400 ROYAL ST.
NEW ORLEANS, LA. 70130

Mr. Robert F. Collins
Attorney at Law
2211 Dryades Street
New Orleans, Louisiana

Re: No. 23173 - Margaret M. Johnson, et al
-vs- Jackson Parish School Board, et al
No. 23192 - Yvornia Decarol Banks, et al
-vs- Claiborne Parish School Board, et al
No. 23253 - Jimmy Andrews, et al -vs- City of Monroe, Louisiana, et al.

Dear Sir:

I am authorized by this court to advise that your **Motion to Consolidate** was received and filed this **10th** day of **February**, 19**66**, and under the rules and practice of this Court will be presented for ruling without oral argument on or about **February 25, 1966*** , together with any response or opposition that may be filed by opposing counsel by that date.

Very truly yours,

Edward W. Wadsworth

EDWARD W. WADSWORTH,
Clerk

/bwc
cc: Mr. Carl Rachlin
Mr. Alvin J. Bronstein
Mr. Harris David
Hon. Jack P. F. Gremillion
Mr. Fred L. Jackson
Mr. William H. Baker
Mr. William F. Pipes, Jr.
Mr. Albin P. Lassiter
Mr. Harold B. Judell

* This is only the date on which it is now expected that the matter will be forwarded for ruling, and does not mean that this office will be able to advise counsel of the Court's action by then. Counsel should allow at least ten days' time thereafter for advice as to the Court's ruling before making inquiry.

JOHNSON, MARGARET, M. et al. VS. JACKSON PARISH SCHOOL BOARD et al. 1967

Box 3
Folder 1

al Society Of Wisconsin

Please Retain Original Order

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Margaret M. Johnson, et al., Appellants, vs. Jackson Parish School Board, et al., Appellees	No. 23173
Jimmy Andrews, et al., Appellants, vs. City of Monroe, Louisiana, et al., Appellees	No. 23253
Yvornia Decarol Banks, et al., Appellants, vs. Claiborne Parish School Board, et al., Appellees	No. 23192

Appeals from the United States District Court for the Western District of Louisiana, on Motion for Reconsideration.

BRIEF FOR RESPONDENTS

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IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Margaret M. Johnson, et al., Appellants, vs. Jackson Parish School Board, et al., Appellees	No. 23173
Jimmy Andrews, et al., Appellants, vs. City of Monroe, Louisiana, et al., Appellees	No. 23253
Yvornia Decarol Banks, et al., Appellants, vs. Claiborne Parish School Board, et al., Appellees	No. 23192

Appeals from the United States District Court for the Western District of Louisiana, on Motion for Reconsideration.

BRIEF FOR RESPONDENTS

Statement of the Case

Between May and August of 1965 complaints were filed below in these three appeals alleging that the defendant school boards were maintaining racially segregated dual school systems for whites and Negroes, contending that this racial basis for classification conflicted with the Due Process and Equal Protection

clauses of the Fourteenth Amendment to the United States Constitution, and requesting a decree in equity ordering the defendants to discontinue such management of their school districts and to restore them to the point where every vestige of unconstitutional segregation by race had been eliminated. The District Court eventually 1/ issued three decrees ordering the defendants to cease operating dual school systems and to file a statement with the Court reflecting their plans to achieve desegregation ("Desegregation Plans"). Defendamts took no appeal from these decrees; hence the point of departure and the basis for relief is clear and conceded. The three school systems involved have been racially segregated de jure, plaintiffs have been the victims of unconstitutional state action, and the sole appellate question is one of remedy.2/What must be done to end the abridgement by the defendant school districts of the plaintiffs' constitutional rights?

In each of these cases defendants filed Desegregation plans, plaintiffs filed objections to the plans, the District Court overruled plaintiffs' objections, and

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1/ In two of the cases, Nos. 23192 and 23253, motions were filed before this Court for temporary injunctive relief, and this Court remanded the appeals to the District Court for consideration in the light of Singleton v. Jackson Municipal Separate School District 355 F.2d 865 (5 Cir., 1966), and Price v. Denison Independent School Board 348 F.2d 1010 (5 Cir., 1965).

2/ For this reason the Monroe School Board's brief misplaces reliance on Deal v. Cincinnati Board of Education 369 F.2d 55 (6 Cir., 1966) which dealt with assumed de facto segregation.

a second decree issued in substance approving the plans which plaintiffs had found objectionable. Plaintiffs' principal objections were:

1. The plans postponed "the question of desegregation of teaching and administrative personnel * * * until the plan for desegregation of pupils, as finally approved, either has been accomplished or has made substantial progress." (No. 23173 Tr. 27; No. 23192, Tr. 28; No. 23253, Tr. 48 -- paragraph 4).

2. The plans postponed completion of pupil desegregation for three years. (e.g. Tr. 47, No. 23253).

3. The defendant school boa rds reserved unlimited discretion to assign a student to any school in the system in "unusual circumstances." (e.g. No. 23192 Tr. 52-53, paragraph 5(e).

4. In "unusual circumstances" the sex of the pupil could be the basis for school assignment. (id.)

5. In "unforeseen circumstances" the defendant boards could alter any portion of the plan which had not yet become effective. (ibid. Tr. 55, paragraph 12).

6. Failure in the course of past segregated educational

experience could cause a student to forfeit his right to future desegregated education. (ibid., Tr. 52, paragraph 5(b)).

7. Current structure of curriculum could be a basis for refusal to give a student desegregated education, i.e. course "availability" was a basis for denial of admittance to a school. (ibid., Tr. 52, paragraph 5(c)).

8. "Availability of * * * physical facilities" could excuse failure to desegregate. (ibid., paragraph 5(d)).

9. Negro students had to attend the school nearest their homes regardless of the fact that prior practices of de jure segregation contributed to the development of the neighborhoods in which they lived. (ibid., Tr. 52-53, paragraph 5(e)).

10. Any desegregation effort could be overriden by "reasonable procedural requirements" established by the defendant boards. (ibid., paragraph 5(1).

11. The plans relied on student "free choice" as the means by which to achieve desegregation.

The second decree modified the plans as submitted only by accelerating desegregation of pupils by one year,

by limiting assignment to a neighborhood school only if the assigned school is "comparable" to that chosen by the pupil, and by eliminating "unusual" and "unforeseen" circumstances as the basis for frustration of desegregation.

For the purpose of appellate review the Jackson Parish and Claiborne Parish cases, Nos. 23173 and 23192, were consolidated with several others and remanded to the District Court by a panel of this Court in an opinion and order written by Judge Wisdom and entered December 29, 1966 sub nom. United States and Linda Stout v. Jefferson County Board of Education, No. 23345. Judge Cox, sitting by designation, dissented. In the City of Monroe case, No. 23253, the same panel of this Court entered an order remanding to the District Court because "the school desegregation plan * * * fails in several important respects to meet the standards established by this Court in" Jefferson County, supra.

In Jefferson Judges Wisdom and Thornberry entered a form of decree for the guidance of the courts below in dealing with de jure school district racial segregation. Except to the extent that, in carefully circumscribed situations, this form of decree permits use of student "free choice" as a device for elimination of segregation, this decree satisfies all of plaintiffs objections to the plans and decrees approved below.

In balance, therefore, plaintiffs have decided to file no petition for reconsideration by this Court of the form of decree set out in Jefferson and, unless it is modified, will take no appeal to the Supreme Court.

However, the Monroe City School Board has served on one of the attorneys representing the plaintiff in No. 23253 a brief in support of a petition for reconsideration of this decree by this Court en banc. This brief is filed in reply to that document. If other such briefs have been filed by the Jackson Parish School Board in No. 23173 and by the Claiborne Parish School Board in No. 23192 it is not possible to reply to them because counsel for plaintiff have not been served with copies. Assumedly, therefore, any such other briefs will not be considered by this Court.

QUESTION PRESENTED

1. Is plaintiffs' immunity from state action compelling them to receive racially segregated public education based on the Civil Rights Act of 1964?

2. Assuming, as plaintiffs believe, that their right to desegregated public education stems from the Fourteenth Amendment to the Constitution and not from the Civil Rights Act, is the form of decree appended to Judge Wisdom's opinion in Jefferson an appropriate method

by which to eliminate de jure school desegregation?

ARGUMENT

I. Plaintiffs' rights do not rest on the Civil Rights Act of 1964.

This point of argument hardly needs expansion and certainly would require no mention in this brief were it not for the extraordinary misconception under School Board which the City of Monroe/evidently operates. Points 1, 2 and 9 briefed by the City of Monroe all raise questions concerning the interpretation of the Civil Rights Act. These points ignore the statement at page 114 of Judge Wisdom's opinion that:

> "In any school desegregation case the issue concerns the constitutional rights of Negroes, individually and as a class, and the constitutional rights of the State--not the issue whether federal financial assistance should be withheld under Title VI of the Civil Rights Act of 1964."

Earlier in the opinion he amplified these views:

> "(T)he equitable powers of the courts exist independently of the Civil Rights Act of 1964." (p. 79).
>
> "As far as possible federal courts must carry out congressional policy. But we must not overlook the fact that 'we deal here with constitutional rights and not with those established by statute.'" (p. 87).
>
> "Congress recognized that HEW's requirements for qualifying for financial assistance are one thing and the courts' constitutional and judicial responsibilities are something else again. The (Civil Rights) Act states, therefore, that it did not enlarge the courts' existing power to ensure compliance with constitutional requirements. But neither did it reduce the courts' power." (p. 93).

These propositions seem so self evident as to render argument in their behalf an insult to the intelligent reader. To the extent they need documentation Judge Wisdom's eloquent and scholarly opinion supplies it amply. The brief for the Monroe City School Board not only ignores these statements in Judge Wisdom's opinion, but also proceeds on the tacit assumption that just their opposite is true. The assumption being in error, all arguments based on it need no further reply.

II. The form of decree proposed by Judge Wisdom's opinion is an appropriate form of relief to eliminate de jure segregation.

In its point No. 8 the City of Monroe School Board complains that the proposed form of decree requires the Board to use "law enforcement officers" to force "negro (sic) and white children to attend schools of its (sic) choosing in order to have active integration." The stuttering syntax of this sentence is understandable. Words will not bear the burden of contradiction which the Board wants to express. How can one "force" a child to attend the school of his "choosing." What the Board really means and what it really objects to is quite a different effect of the proposed form of decree. Judge Wisdom's decree forbids white children and their parents and their delegates on the Board from interfering with attendance by Negro children at schools chosen by the Negro children. It goes without saying

that the decree has the obverse effect of forbidding Negro children and their parents from interfering with the attendance by white children at schools chosen by white children. This aspect of the decree is what troubles plaintiffs; there is serious question whether a "free choice" plan will effectively eliminate racial segregation in the defendant school systems. However, plaintiffs at this time are willing to accept this risk.

The point is that the Monroe School Board ventures to object even to the minimal forward step marked out by the decree. Implicit in their objection is the desire that white children and their parents <u>retain the freedom to prevent Negro children from attending the school of their choice</u>.

Another construction can be placed on the Monroe School Board's objection: they may be objecting to an alleged requirement of the decree that children in Monroe attend the schools of "its", i.e. the School Board's choosing. If this is petitioner's complaint it must fail for two reasons: (1) The specific thrust of the decree is to allow the child and not the Board to choose the school the child will attend. This is what "free choice" means. (2) A fundamental function of a school board is the assignment of children to schools. To the extent the decree leaves the Board with

freedom to perform this functionit does no more than preserve the status quo. To the extent it supplies the Board with mandatory guidance as to how this function can be performed without violating the Fourteenth Amendment to the Constitution, it does no more than enforce the law of the land. In a school district operating dual, racially segregated attendance zones, what possible objection can there be to a requirement that the Board, in order to abolish such attendance zones and restore the system to constitutional status, assign "Negro and white children to attend schools" in such a manner as to "have active integration?" Plaintiffs regret that the decree includes no such specific requirement but if it did the appropriateness of such relief is undebatable. Judge Wisdom's opinion supplies the best explanation of this:

> "Manifestly, the duty to desegregate schools extends beyond the mere 'admission' of Negro students on a non-racial basis." (p. 5).
>
> "(A) school board's duty to 'disestablish segregation * * * implies that existing racial imbalance is a consequence of past segregation policies, and, because of this, school boards have an affirmative duty to remedy racial imbalance.'" (p. 6).
>
> "There can be no doubt as to the nature and effect of segregation that came into being and persists because of state action as part of the longstanding pattern to narrow the access of Negroes to political power and to the life of the community." (pp. 52-53).
>
> "Denial of access to the dominant culture, lack of opportunity in any meaningful way to participate in political

and other public activities, the stigma of apartheid condemned in the Thirteenth Amendment are concomitants of the dual educational system. The unmalleable fact transcending in importance the harm to individual Negro children is that the separate school system was an integral element in the Southern States' general program to restrict Negroes as a class from participation in the life of the community, the affairs of the State, and in the mainstream of American life: Negroes must keep their place." (p. 47).

"Adequate redress therefore calls for much more than allowing a few Negro children to attend formerly white schools; it calls for liquidation of the state's system of de jure school segregation and the organized undoing of the effects of past segregation." (p. 48).

"Relief to the class (of Negro school children) requires school boards to desegregate the school from which the transferee comes as well as the school to which he goes. * * * Faculties, facilities, and activities as well as student bodies must be integrated. * * * Brown II envisaged the remedy following the wrong, the state's correcting its discrimination against Negroes as a class, through separate schools, by initiating and operating a unitary integrated school system." (p. 51).

"The Constitution is both color blind and color conscious. To avoid conflict with the equal protection clause, a classification that denies a benefit, causes harm, or imposes a burden must not be based on race. In that sense, the Constitution is color blind. But the Constitution is color conscious to prevent discrimination being perpetuated and to undo the effects of past discrimination. The criterion is the relevancy of color to a legitimate governmental purpose." (pp. 69-70).

"Here race is relevant, because the governmental purpose is to offer Negroes equal educational opportunities. The means to that end, such as disestablishing segregation among students, distributing the better teachers equitably, equalizing facilities, selecting appropriate locations for schools, and avoiding resegregation must necessarily be based on race. School officials have to know the racial composition of their school populations and the racial distribution within the school district. The Courts and HEW cannot measure officials' good faith or progress without taking race into account." (p. 70-71).

"The position we take in these consolidated cases is that the only adequate redress for a previously overt system-wide policy of segregation directed against

Negroes as a collective entity is a system-wide policy of integration." (p. 55).

In the final Point No. 10 the Monroe School Board finishes a circular argument which runs into and conflicts with its beginning, viz:

"10.

"Jefferson case holds that local school board must assume the responsibility for enforcing the decree of the Court, while reserving the real authority to enforce to HEW." (p. 6).

"1.

"The Jefferson case does not apply to Applicant in that Defendants in the Jefferson case were shown to be accepting Federal Funds and thus governed by Title VI of the Civil Rights Act of 1964, whereas Applicant is not in that class."

"2

"The Jefferson case does not apply to Applicant because the Civil Rights Act of 1964 specifically establishes that the Department of Health, Education and Welfare has jurisdiction over a school system when it is accepting Federal Funds, or agrees voluntarily, which Applicant has not done." (p. 2).

If the Monroe City School District accepts no HEW funds how possibly can the proposed decree grant HEW "authority" over the Monroe School Board? A review of the language of the decree fails to disclose a single reference to HEW, whether direct or by implication. The problem before the Court is one of remedy; what relief shall plaintiffs have from the acknowledged segregation by state action to which they have been subject? In formulating that relief the proposed decree subjects

defendants to no "authority" or power of the United States Department of Health, Education and Welfare.

The School Board denies this and says that Judge Wisdom's "opinion says the District Court must force the school board to use HEW guidelines, present and future." (p. 7).

Clearly the Board errs so far as the decree is concerned and it is the decree that interests plaintiffs here, because they can expect relief only from the decree, not from the opinion. However, what did Judge Wisdom say about this in his opinion?

> "The announcement in HEW regulations that the Commissioner would accept a final school desegregation order as proof the the school's eligibility for federal aid prompted a number of schools to seek refuge in the federal courts. Many of these had not moved an inch toward desegregation. The following statement appeared in the Shreveport Journal for July 1, 1965: 'The local school boards prefer a court order over the voluntary plan because HEW regulations governing the voluntary plans or compliance agreements demand complete desegregation of the entire system, including students, faculty, staff, lunch workers, bus drivers, and administrators, whereas the court-ordered plans can be more or less negotiated with the judge.' This was not news to the Court." (p. 34). 1/
>
> "School Boardscannot * * * by giving up federal aid, avoid the policy that produced this limitation (no racial discrimination) on federal aid to schools * * *." 2/ (p. 13).

1/ As did Judge Wisdom, the Monroe School Board also attaches importance to current, published analyses of public affairs, e.g. a "pamphlet" by the "Commissioner of Education" entitled "'The Human Frontier,' based on talks made in May and June, 1966," and a "speech before the Law School of New York University" by "Hon. J. Skelly Wright." (Monroe brief, p. 5).

2/ An avoidance to which Monroe invites notice in its brief, p. 2.

"The HEW Guidelines are 'minimum standards' representing for the most part standards the Supreme Court and this Court established before the Guidelines were promulgated. * * * /Exceptions to the guidelines should be/ confined to those rare cases presenting justiciable, not operational questions * * *. (p. 17).

" * * * (T)he standards of court-supervised desegregation should not be lower than the standards of HEW-supervised desegregation." (p. 9).

"Courts in this circuit should give 'great weight' to HEW Guidelines." (p. 6).

"A gross discrepancy between the ratio of Negroes to white children in a school and the HEW percentage guides raises an inference that the school plan is not working as it should in providing a unitary, integrated system. Thus Evans v. Buchanan, D. C. Del. 1962, 207 F. Supp. 820 held that this natural inference coupled with the Board's possessing the probative facts that might rebut the inference created a presumption that the proposed desegregation plan was unconstitutional." (p. 98).

"In some cases the parties may challenge various aspects of HEW-approved plans. Our approval of the existing Guidelines and the deference owed to any future Guidelines is not intended to deny a day in court to any person asserting individual rights or to any school board contesting HEW action. In any school desegregation case the issue concerns the constitutional rights of Negroes, individually and as a class, and the constitutional rights of the State -- not the issue whether federal financial assistance should be withheld under Title VI of the Civil Rights Act of 1964." (pp. 113-114).

(J)udges * * * can ill afford to turn their backs on the proffer of advice from HEW. Or from any responsible government agency or independent group competent to work toward solution of the complex problem of de jure discrimination bequeathed this generation by ten preceding generations." (p. 116).

CONCLUSION

Judge Wisdom commends to the people of the Fifth Circuit that they lift their eyes to a horizon of humanity, decency and fairness towards which they may move if only they will

take the first step. He commends to the District Courts of the Fifth Circuit that they see the problem of racial segregation as a painful, twisted cat's cradle of social anxieties stretched among the polarities of fear, arrogance and apathy. Immediacy in solving this problem and collapsing these outposts of tension becomes more pressing each day, week and month of our lives. Neither history nor the Power that produced and sustains us will abide abominations forever. So Judge Wisdom's opinion says to the Courts below, you must act promptly, wisely and creatively. No compromise with the past will serve. No path towards future decency can remain unexplored.

Therefore plaintiff-respondents strongly urge that not only the proposed decree but also the accompanying opinion be let stand as the law of the Fifth Circuit, for together they are an astute, extraordinary and unique expression of high principle and strong purpose. They will be remembered when the lawyers and litigants alike in these cases shall have been long forgotten.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have served this brief on all parties of record by mailing a copy thereof, postage prepaid, addressed to each of the persons listed on the notice of oral argument published by Edward W. Wadsworth, Clerk of the Fifth Circuit United States Court of Appeals on February 21, 1967 in No. 23345.

Done in the City, County and State of New York this first day of March, 1967.

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IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

JOHNSON v. JACKSON PARISH SCHOOL BOARD	No. 23,173
BANKS v. CLAIBORNE PARISH SCHOOL BOARD	No. 23,192
UNITED STATES v. CADDO PARISH SCHOOL BOARD	No. 23,274
UNITED STATES v. FAIRFIELD BOARD OF EDUCATION	No. 23,331
BROWN v. BOARD OF EDUCATION OF THE CITY OF BESSEMER	No. 23,335
UNITED STATES v. JEFFERSON COUNTY BOARD OF EDUCATION	No. 23,345
UNITED STATES v. BOSSIER PARISH SCHOOL BOARD	No. 23,365

APPELLANTS APPELLEES

ON APPEAL FROM THE UNITED STATES DISTRICT COURTS
FOR THE NORTHERN DISTRICT OF ALABAMA
AND THE WESTERN DISTRICT OF LOUISIANA

BRIEF FOR THE UNITED STATES ON REHEARING

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I

INTRODUCTION

These seven school desegregation cases are before this Court for rehearing en banc after decision by a three-judge panel on December 29, 1966, reversing the judgments in the courts below. Four of these cases arise from the Western District of Louisiana and three from the Northern District of Alabama. The issue involved in each is whether the district court erred in approving as adequate the school desegregation plan submitted by the school board.

The three-judge panel, one judge dissenting, held that the courts below had erred in approving the plans. The Court found the plans to be inadequate

in a number of respects and remanded each case for entry of an order in accordance with a decree appended to the opinion of the three-judge panel.

The decree contains two principal features lacking in the plans approved by the district courts. First, the decree requires that the school boards do more than simply offer students a "free choice" of schools and requires affirmative steps to disestablish the dual school system which each maintains by official policy. Second, it spells out in detail the procedures to be followed by each school board in operating its "freedom of choice" plan of desegregation. In spelling out these procedures, the decree draws heavily upon procedures set forth in the Revised Statement of

Policies for School Desegregation Plans Under Title VI of the Civil Rights Act of 1964, issued by the Office of Education of the Department of Health, Education and Welfare in March 1966, and commonly referred to as the "Guidelines."

We believe that upon the basis of prior decisions by the Supreme Court, by this Court and by courts of appeals of other circuits the decision of the three-judge panel was correct, and that the decree directed to be entered by the courts below is not only appropriate but that the formulation of such a decree is compelled by the history and record in these cases.

The appellees, in petitioning for rehearing, asserted that the decision of the panel held that the Constitution imposes an absolute duty to achieve a racial mixing of students so as to

eliminate a disproportionate concentration of Negroes in certain schools within a system. Once this proposition is asserted, the appellees have no difficulty in disparaging the opinion as being inconsistent with prior holdings of the Fifth Circuit. It is true that the panel indicated its concern that educational opportunities on an equal basis be furnished to all, and the opinion does suggest in a footnote that elimination of the all-Negro school makes this objective easier to obtain. But the appellees misread the opinion when they claim that this is the holding of the Court.

The Court holds that school officials who maintain racially-segregated public schools have a constitutional duty to reorganize the dual system into a unitary

non-racial system: faculty, staff, students, facilities, programs, activities. Thus the decree requires the desegregation of faculty and staff, the abandonment of the dual transportation system and the planning and location of school facilities to convert the dual system into a single system where schools are not "white schools or Negro schools -- just schools."

We believe the decree announced by the three-judge panel was not only proper for these seven cases, but was also an appropriate model to be used by the district courts in other school desegregation cases involving free choice systems of assignment. This decree concerns itself with the school from which an individual Negro comes as well as the school to which he goes, and such concern is essential if educational opportunities on equal terms are to be afforded to all students without regard to race.

There are other reasons for the adoption of the decree. First, it will permit a degree of uniformity between court-ordered desegregation plans in this Circuit that has heretofore been lacking. Second, it will permit uniformity of treatment between those school districts desegregating pursuant to voluntary plans submitted to the Office of Education and those school districts desegregating under court order.

We urge that this Court adopt the model decree formulated by the three-judge panel.

II.

PROCEDURAL HISTORIES

These are seven cases brought to secure the rights of Negro children to a desegregated education. They were brought in the Northern District of Alabama and the Western District of Louisiana prior to the opening of the 1965-66 school year.[1] The United States of America subsequently intervened as plaintiff or appellant in all seven cases.[2]

A. The Alabama Cases Prior to this Appeal: Jefferson, Fairfield and Bessemer

Hearings on plaintiffs' motions for preliminary injunctions were held in June 1965 in Bessemer (R. 90-180)

1/ Lemon, et al. v. Bossier Parish School Board, et al. was filed December 2, 1964; Jones et al. v. Caddo Parish School Board, et al., May 4, 1965; Brown, et al. v. Board of Education of City of Bessemer, et al., May 24, 1965; Johnson, et al. v. Jackson Parish School Board, et al., June 2, 1965; Stout, et al. v. Jefferson County Board of Education, et al., June 4, 1965; Boykins, et al. v. Fairfield Board of Education, et al., July 21, 1965; and Banks, et al. v. Claiborne Parish School Board, et al., August 10, 1965.

2/ Detailed chronologies of the procedural histories of these cases are included in this Brief as Attachment C.

and Jefferson (R. 76-149), and in August in Fairfield (R. 75-177). The District Court ordered the defendants to submit plans for desegregation (Fairfield R. 80, Bessemer R. 41-42, Jefferson R. 27-28).

Defendants submitted plans for desegregation (Fairfield R. 48-58, Bessemer, R. 43-48, Jefferson R. 29-37) and plaintiffs and the United States filed objections to these plans (Fairfield R. 34-41, Bessemer R. 49-56, Jefferson R. 38-45).

Hearings on the objections to the plans were held in July in Bessemer (R. 181-268) and Jefferson (R. 150-272) and in August in Fairfield (R. 7). The Court entered orders overruling objections to the plans and approving the plans, with certain amendments (Fairfield R. 65-66, Bessemer R. 64-67, Jefferson R. 52-53). In each case the Court also filed Memorandum Opinions with findings of fact and conclusions of law (Fairfield R. 67-70, Bessemer R. 37-40, Jefferson R. 24-26).

On August 5, 1965, appeals were taken from these orders in Bessemer (R. 68-69) and Jefferson (R. 54-55), and following motions for injunctions pending appeal (Bessemer R. 75-80, Jefferson R. 60-65), this Court vacated and remanded the cases to the District Court on August 17, 1965 for further consideration in light

of the Singleton I and Price decisions (Bessemer R. 71-72, Jefferson R. 56-57). The United States then filed motions for orders in conformity with this mandate (Bessemer R. 73-74, and Jefferson R. 58-59).

Defendants filed amendments to their plans (Bessemer R. 81-84 and Jefferson R. 66-69); plaintiffs and United States objected to the amended plans. On August 27, 1965 the District Court again overruled the objections and ordered the plans approved as amended (Bessemer R. 85-86 and Jefferson R. 70-71).

Appeals were taken on October 22 in Fairfield (R. 73) and on October 25 in Bessemer (R. 88) and Jefferson (R. 72) from the orders approving the plans as amended.

B. The Louisiana Cases Prior to this Appeal:

1. Claiborne and Jackson

In Claiborne, plaintiffs additionally sought a temporary restraining order (R. 2-9). The District Court denied this request; an appeal was taken (R. 25) and on August 26, 1965 this Court remanded the case to the District Court for further consideration in light of the Singleton I and Price decisions (R. 27).

After a pre-trial hearing in Jackson the Court issued permanent injunctions on August 27 in Claiborne

and July 27 in Jackson, ordering the defendants to submit plans for desegregation (Claiborne, R. 28-30, Jackson R. 26-39). Defendants submitted plans in September (Claiborne R. 31-36; Jackson R. 32-39). Plaintiffs filed objections to the plans regarding the criteria the Board may use to deny transfers and the failure to include detailed provisions to ensure that all children will have a free choice. (Claiborne, R. 37-45, Jackson R. 40-46) In October, 1965 the Court entered orders overruling the objections and approving the plans with amendments (Claiborne R. 45-52, Jackson R. 47-53).

Appeals were taken from these orders on October 29 in Claiborne (R. 52) and on November 1 in Jackson (R. 53).

2. Bossier and Caddo

Following hearings, on April 13, 1965 in Bossier (Rl. 113-16) and June 14 in Caddo (R. 133-36), the District Court issued permanent injunctions ordering the defendants to submit desegregation plans.[3/]

Defendants submitted plans for desegregation (Bossier R2. 1-12, Caddo R. 138-150).

3/ In Bossier the Court also granted plaintiffs' motion for summary judgment (Rl. 112), and an appeal was taken from this decree (Rl. 125-26).

Objections to the plans, regarding the rate, scope and method of desegregation and the lack of provisions providing for transfers to take courses not available; for non-racial assignments of new students; for the desegregation of services, activities and programs, including transportation; and for faculty desegregation, were filed (Bossier R2. 13-15, 30-33, Caddo R. 158-160). Hearings were held on the plans and objections (Bossier R2. 34-250, Caddo R. 161-290); the objections were overruled and the Court entered orders, on July 28 in Bossier (R2. 251-58) and on August 3 in Caddo (R. 291-98), approving the plans with modifications.

In Bossier, appeal was taken on August 5 from this order (R2. 258) and, following a motion for injunction pending appeal, this Court, on August 17, 1965, vacated and remanded the case to the District Court for further consideration in light of the Singleton I and Price decisions (R2. 260-61). Plaintiffs' motion in the District Court for clarification and amendment of the order approving the plan as to certain named transfer applicants was denied.

Following a motion in Caddo to vacate and reconsider the order approving the plan in light of the order of this Court in the Bossier case (R. 299), the District Court entered orders in both cases approving the plans with amendments (Bossier R2 261-63 and Caddo R. 303-04)

Appeals were taken in Bossier on October 19, 1965 from this order (R2. 274) and from the order denying plaintiffs' motion for clarification (R2. 263-64), and in Caddo on October 19, 1965 from the order denying the United States' motion to intervene (R. 305).

C. The History of this Appeal

1. Motion to Consolidate and Expedite

On April 4, 1966 the United States filed a Motion to Consolidate and Expedite the appeals in Jackson, Claiborne, Caddo, Bossier, Fairfield, Bessemer and Jefferson and a Memorandum in Support of That Motion. As reasons for consolidating and expediting, the Memorandum stated:

> These cases raise questions of fundamental importance to the progress and manner of school desegregation in the Fifth Circuit. Their resolution should provide needed guidance to the district courts in this circuit and should greatly help the process of bringing all school districts within this Court's jurisdiction into conformity with the school desegregation requirements of the Constitution. Additionally, resolution of the issues may well relieve this Court and the district courts of repetitious litigation on the same basic issues.
>
> * * *
>
> In our view, inadequacies in the seven plans have resulted in their failing to achieve the progress in desegregation required by the Constitution, the Supreme Court, the decisions

> of this Circuit, and the administrative procedures formulated by the Department of Health, Education and Welfare.

2. Directives of this Court

On April 7, 1966 this Court, by direction of Judge Rives, set the seven cases for hearing the week of May 23, 1966 in New Orleans. "In those cases in which briefs have not been filed, appellants' and appellant-intervenors' briefs should be filed by April 25, 1966. Appellees' briefs should be filed by May 16, 1966."

On April 21, 1966, Mr. Wadsworth, Clerk of the Fifth Circuit, sent a letter to all counsel in the seven cases requesting the parties to file supplemental briefs discussing the following questions relating to HEW and school segregation:

> (1) To what extent, consistent with judicial perogatives and obligations, statutory and constitutional, is it permissible and desirable for a federal court (trial or appellate) to give weight to or to rely on HEW guidelines and policies in cases before the court?

(2) If permissible and desirable, what practical means and methods do you suggest that federal courts (trial and appellate) should follow in making HEW guidelines and policies judicially effective?

3. Oral Argument and Order

Briefs and supplemental briefs were filed by the parties. On May 24-25, 1966, oral argument was held before this court (Judges Wisdom, Thornberry and Cox) in New Orleans. On June 3, the United States submitted a supplemental memorandum, pursuant to the request of the court made during oral argument. The memorandum dealt with several questions which were raised on the Government's Proposed Decree and the Skidmore case which was cited during oral argument. This Court entered its order in these cases on December 29, 1966.

4. Rehearing En Banc

On January 27, 1967, the appellees filed Petitions for Rehearing En Banc in these cases.

On February 9, this Court granted the Petitions for Rehearing En Banc "in view of the importance of

these cases . . . . The cases will be submitted on briefs only. The petitioners will file any additional briefs on rehearing within two weeks of the date of this order. The respondents will have an additional seven days within which to file answering briefs."

The appellees then filed Motions for Oral Argument. On February 21, 1967, this Court granted oral argument on rehearing en banc on March 10 in Jacksonville and allowed two and a half hours each for the petitioners and respondents.

III.

THE DESEGREGATION PLANS APPROVED BY THE DISTRICT COURT IN EACH OF THESE SEVEN CASES FALL FAR BELOW ADEQUATE STANDARDS OF RELIEF.

In our ~~orginial~~ original ~~beliefs~~ briefs we analyzed in detail the inadequacies in the desegregation plans which were approved by the district courts in these seven cases. Here we do not repeat that analysis but rather set forth in summary form for the convenience of the Court the facts in these cases [4/] showing that the decisions below fail to meet the requirements of the decisions of this Court.

A. Racial Assignment of Students

At the time these cases were filed in the district courts in 1965 the school boards followed the principle of assigning students to separate schools upon the basis of race. (Bessemer R. 38; Fairfield R. 68-69; Jefferson R. 24; Bossier RII. 130; Caddo R. 74-75; Claiborne R. 26; Jackson R. 19-20) This meant that in instances Negro students had to pass white schools on their way to Negro schools, and white students had to pass Negro schools

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4/ The factual evidence in Claiborne and Jackson is limited because Judge Dawkins did not hold factual hearings in either of these cases. On the basis of the pleadings he ordered the defendant Boards to submit to the Court a plan for the desegregation of their respective school systems. (Claiborne R. 28-30; Jackson R. 26-29)

(See, e.g., Bessemer R. 159; Jefferson R. 127).

The plans for desegregation approved by district courts for the Alabama school systems maintain these racial assignments even in "desegregated" grades (Bessemer R. 45-46; Fairfield R. 62; Jefferson R. 34). Students continue to be assigned on the basis of race but are given the right to transfer to a school of the opposite race. Even students entering the first grade must initially appear at the school of their race and then may enroll in that school or apply for transfer to a school of the opposite race (Bessemer R. 44-45; Fairfield R. 60-61; Jefferson R. 31-33). 5/

The district court orders in the Louisiana cases enjoined the school board from "continuing to assign students to schools with regard to race or color" and from "continuing to operate a compulsory bi-racial school system" (Bossier District Court Order of April 13, 1964; Caddo District Court Order of June 14, 1965; Claiborne R. 28; Jackson R. 27), and provisions were made in the approved plans for all these systems to the effect that, commencing with 1966-67, initial

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5/ The United States' objection to this provision (Bessemer R. 54-55; Fairfield R. 39-41; Jefferson R. 44-45) was overruled. (Bessemer R. 64-67; Fairfield R. 66; Jefferson R. R53, 71)

assignment of students would be based on a purported "freedom of choice" (Bossier RII. 256; Caddo R. 296; Claiborne R. 49-51; Jackson R. 50-51). However, all of these plans failed to set forth specific procedures that would make it clear that initial assignments were to be made without regard to race and that the burden would not be left upon Negro students to obtain assignments to schools to which white students were automatically assigned. For example, Bossier Parish Superintendent Emmett Cope testified that in the past students were assigned to schools in the Bossier Parish System according to race, with no regard to choice, and that choice was only instituted now because the system had been ordered to desegregate (Bossier RII. 130-131). Upon further questioning he testified:

> Q. Again, if no one exercises any choice, the school system and the assignments will remain exactly as they have in the past?
>
> A. That is true.
> (Bossier R. 131)

In fact, then, the Louisiana plans as operating are transfer plans superimposed on racial assignments. Furthermore, they purport to list criteria to be applied in determining whether or not a request for transfer

shall be granted (Bossier RII. 253-255; Caddo R. 293-295; Claiborne R. 49-50; Jackson R. 34-35), but actually the decision is left up to the discretion of the school board. For example, the fifth criteria in all of the Louisiana plans reads:

> In the event a transfer or assignment is requested to a particular school, but it develops that there is available space in another school, in all respects comparable to the one to which transfer or assignment is requested, closer to the applicant's residence, the School Board may, if it deems it advisable, make the transfer or assignment to the comparable school closest to the pupil's residence rather than to the school to which the transfer or assignment was requested.

B. Faculty Segregation

Records in six of these seven cases[6] show that all faculty members are assigned upon the basis of their race to schools traditionally attended by students who are of their race. (Bessemer R. 39; Fairfield R. 69; Jefferson R. 25; Bossier RII. 179-180; Caddo R. 74; Jackson R. 19-20).

None of the plans for desegregation in these seven cases which were approved by the district courts deal in any way with the desegregation of faculties. (Bessemer R. 43-48, 64-67, 81-83; Fairfield R. 60-64; Jefferson R. 30-37, 53, 66-68; Bossier RII. 251-257, 261-262; Caddo R. 291-297, 303-304; Claiborne R. 46-51; Jackson R. 47-52).

There is no evidence that there is any administrative impediment to the desegregation of faculties and in fact the Bessemer and Jefferson County Superintendents admitted that there are no such administrative barriers. (Bessemer R. 121; Jefferson R. 138.)

6/ The record in Claiborne Parish is silent on this subject.

C. Segregation by Construction and Consolidation of Schools

Since all the defendant school boards maintained segregated school systems in the past it follows that schools were located and consolidated on the basis of the dual system. For example, the record in Jefferson County shows that in 1963 the University of Alabama conducted a survey of the schools in the Jefferson County System and made recommendations for building construction projects. Pl. Int. Ex. 4 in the Jefferson record is a report of this survey. In the report all recommendations were based on, and made for, a dual set of school clusters, one for white schools and one for Negro schools. Each cluster consists of a high school with junior high schools feeding into it and elementary schools feeding into the junior high schools. Needs in each cluster were evaluated in light of an examination by the survey team of the adequacy of the size of the site and buildings at each school in relationship to growth in both total population and school population of the race for which the school had been maintained. The survey recommended 80 construction projects: 50 for white clusters and

30 for Negro clusters. As of June, 1965 the Jefferson County Board of Education had adopted 44 of the 50 recommended projects for the white school clusters and 28 of the 30 recommended projects for the Negro school clusters (Jefferson R. Pl. Exs. 8A, 8B, 8C).

An example of construction done in order to avoid consolidation which would effect desegregation can also be found in the Jefferson County System. Palmerdale School is a white school in the northeastern portion of Jefferson County which was constructed in 1938, at a cost of $115,000.00. Facilities at this school include a combination auditorium gymnasium, a lunchroom, and indoor toilets. In 1960-61 there were 151 students enrolled in the school, less than 20 per classroom. (Jefferson R. Pl. Int. Ex. 10). In the 1958 report by the University of Alabama of their comprehensive study of the public schools in Jefferson County, part of the discussion concerning Palmerdale School read, "Ample space is available at Palmerdale in a good building . . ." (Jefferson R. Pl. Int. Ex. 5, p. 282).[7/] In 1960

7/ One hundred forty-seven students were enrolled at Palmerdale at the time of the survey.

the Jefferson County Board of Education thought it necessary to build a school for Negro children in the area near Palmerdale. Village Springs Elementary opened in 1960-61. It consists of two portable classrooms in a wooded area with two outside pit toilets located at the site. Sixty-nine Negro students attended this school in 1960-61[8], making a pupil classroom ratio of 35:1. (Jefferson R. Pl. Int. Ex. 11).

The approved plans for desegregation in these seven cases do not make any provisions regarding future construction and consolidation in the systems. (Bessemer R. 43-48, 64-67, 81-83; Fairfield R. 60-64; Jefferson R. 30-37, 53, 66-68; Bossier RII. 251-257, 261-262; Claiborne R. 46-51; Caddo R. 291-297; 303-304; Jackson R. 47-52). The plans do not contemplate and the district courts do not require these school boards to implement future construction and consolidation in a manner so as to correct the effects of construction and consolidation which in the past has been done on a racial basis.

8/ 70 students were enrolled at Village Springs at the close of the 1964-65 school year (Jefferson R. 201: Pl. Int. Ex. 1).

D. Unequal Educational Facilities and Programs

In four out of five of these cases in which hearings were held, evidence was introduced showing that the facilities and curricula in some of the Negro schools in these systems were markedly inferior to those in the white schools.

The highest pupil teacher ratio at any of the schools in the Jefferson County System is at a Negro elementary school where there are 41.3 pupils per teacher. The highest ratio at any of the white schools is 35.4:1. Ten of the 35 Negro schools in the system have ratios of over 35:1, but the pupil teacher ratio is over 35:1 in only three of the 82 white schools in the system. (Jefferson R. 114-117: Pl. Ex. 4).

In the Bessemer System two years of French and three years of Spanish are offered to students attending the white high school. Only French is offered at the two Negro high schools. (Bessemer Pl. Int. Ex. 7). A Negro student at one of the Negro high schools requested that a second year of advanced French be offered at her school in order for her to fulfill a college entrance requirement, but arrangements could not be made, so she was unable to take French II. (Bessemer R. 234). She

only lived one block from the white high school, and eight blocks from the Negro high school. (Bessemer R. 232).

An expert on school facilities examined the schools in Fairfield and Bossier Parish and rated the facilities at each on a uniform scale of 100 points. (Fairfield R. 167-175, Bossier R. 195-216). In Fairfield his ratings averaged 55.8 points for white schools and 39.5 points for Negro schools. (Fairfield R. 172) The overall ratings in Bossier Parish indicated that all but one of the six Negro schools ranked behind all 17 white schools. Out of 23 schools in the system the highest Negro school ranked 15th. (Bossier R. 202)

No provisions are made in the desegregation plans approved for any of these four systems for the elimination of such inequality in the Negro schools. (Bessemer R. 43-48, 64-67, 81-83; Fairfield R. 60-64; Jefferson R. 30-37, 53, 66-68; Bossier R. 251-257, 261-262) Yet it is in large measure such inferiority in the Negro schools which perpetuates their racial identity and thus the dual system.

E. Segregated Services, Facilities and Programs

Because white and Negro students in all seven systems under consideration at this time were totally

segregated in the past, (Bessemer R. 38; Fairfield R. 68; Jefferson R. 24-25; Bossier R. 70; Caddo R. 89; Claiborne R. 26; Jackson R. 19-20) there was no evidence in the record of segregated services and programs within particular schools. However, the desegregation plans in all these cases give no assurance to students making the choice that all activities, services and programs offered at the schools in the system will be available to them and that they will not be subject to any disqualifications or waiting period which usually apply to newly enrolled students in the schools. (Bessemer R. 43-48, 64-67, 81-83; Fairfield R. 60-64; Jefferson R. 30-37, 53, 66-68; Bossier R. 251-257; 261-262; Caddo R. 291-297, 303-304; Claiborne R. 46-51; Jackson R. 47-52).

Boards of Education furnish transportation services in three of the seven school systems being considered here.[9/] In all three of these systems, Jefferson County, Bossier Parish and Caddo Parish, students of each race

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9/ No transportation services are provided in Bessemer or Fairfield. (Testimony, Bessemer R. 103; Fairfield R. 197. No mention is made of transportation in the Claiborne or Jackson records.)

ride separate busses. (Jefferson R. 123-124; Bossier R. 248; Caddo R. 110) In addition, in Jefferson (R. 127) white and Negro bus routes in the system overlapped.[10/]

None of the desegregation plans approved for these three systems included provisions for the desegregation of their transportation facilities or the nondiscriminatory use and routing of busses. (Jefferson R. 30-37, 53, 66-68; Bossier R. 251-257, 261-262; Caddo R. 291-297, 303-304). The original desegregation plan submitted to the Court by the Caddo Board of Education stated that where requests for transfers and assignments are made it would not be the responsibility of the School Board to provide transportation in those cases. (Caddo R. 202) In the plan ordered by the Court on August 3, 1965 this provision was deleted, but no other provision regarding desegregation of transportation was made (Caddo R. 291-298).

10/ Jefferson County Superintendent Johnson also testified that in some cases school busses which transport Negro children to the schools would pass or bypass some of the white schools near to the homes of the Negro children (Jefferson R. 127).

F. Lack of Specific Standards, Procedures and Notice

The three court-ordered school desegregation plans being considered here in the Alabama cases fail to specify how or where applications for transfer can be obtained, what information must be placed on the forms, who may execute the forms, or the method of assigning students whose transfers are denied. (Bessemer R. 43-48, 64-67, 81-83; Fairfield R. 60-64; Jefferson R. 30-37, 53, 66-68).

In the Louisiana plans where initial assignments in desegregated grades purport to be made on a "free choice" basis the plans fail to define procedures governing exercise of choices. For example, the length and time of the choice period are not specified, no provision is made for children who fail to make a choice or for a second choice if a student's first choice is denied, and adequate notice of the plan is not provided to students and parents. (Bossier R. 251-257, 261-262; Caddo R. 291-297, 303-304; Claiborne R. 46-51; Jackson R. 47-52.)

In light of the inadequacy of these plans it is hardly surprising that for the 1965-66 school year only 0.19% of the Negro students in these seven school

systems were attending formerly white schools. (Affidavit of St. John Barrett attached to the memorandum in support of the Motion to Consolidate and Expedite Appeals filed by the United States in these cases.) The figures in this affidavit are:

	Enrollment W	Enrollment N	Negroes Admitted To Formerly White Schools
Bessemer, Ala.	2,920	5,284	13
Fairfield, Ala.	1,779	2,159	31
Jefferson County, Ala.	45,000	18,000	24
Caddo Parish, La.	30,680	24,467	1
Bossier Parish, La.	11,100	4,400	31
Jackson Parish, La.	2,548	1,609	5
Claiborne Parish, La.	2,394	3,442	5

IV.

THE DUTY TO DISESTABLISH THE DUAL SYSTEM BASED ON RACE

We believe that the equal protection clause, as construed by the Supreme Court in Brown v. Board of Education, prohibits a school board from creating, organizing, establishing or maintaining a dual educational system -- where one set of schools is for Negroes and the other for whites. For a government entity to organize and maintain its school system on the basis of the principle that Negroes should go to one set of schools and whites should go to another is to deny Negroes the equality they are guaranteed by the Fourteenth Amendment. Government discriminates against the Negroes, as a group and as individuals, by expressing ~~the~~ and implementing a policy and judgment that Negroes should be schooled in separate schools.

It is important to recognize that the use of dual attendance zones based on race is only one of the racial facets of school systems organized and structured on the principle of racial separation. The school systems to which Brown was addressed employed racial attendance zones. But those systems also had the other usual racial aspects. The school authorities, as an integral

part of their method of furthering their policy to maintain separate schools for Negroes and whites, also allocated teachers, located new schools, determined the grades and capacity of schools, organized the school transportation system, and established interscholastic athletic leagues -- to mention some examples -- on the basis of racial segregation. The result was a dual school system, and this entire system, not just the use of dual attendance zones, was condemned by the Supreme Court in Brown. The Court made this purpose clear when it said in its second opinion (at 349 U.S. 294, 300-01):

> [T]he courts will require that the defendants make a prompt and reasonable start toward full compliance with our May 17, 1954, ruling. Once such a start has been made, the courts may find that additional time is necessary to carry out the ruling in an effective manner. . . . To that end the courts may consider problems related to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a nonracial basis, and revision of local laws and regulations which may be necessary in solving the foregoing problems. 11/

11/ See also, Cooper v. Aaron, 358 U.S. 1, 19 (1958), where the Supreme Court said:

> State support of segregated schools through any arrangement, management,

Thus, the constitutional duty owed to each and every Negro child by the school board is to reorganize, to convert and to liquidate the traditional dual system.

This is more, much more, than just granting individual Negroes the right to go to schools traditionally maintained for whites. In Brown, the Supreme Court recognized the full dimensions of the administrative

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(footnote continued from preceding page)

> funds, or property cannot be squared with the Amendment's command that no State shall deny to any person within its jurisdiction the equal protection of the laws. The right of a student not to be segregated on racial grounds in schools so maintained is indeed so fundamental and pervasive that is embraced in the concept of due process of law. Bolling v. Sharpe, 347 U.S. 497.

The Supreme Court has further indicated that the desegregation obligation applies to the entire system. In Bradley v. School Board, 382 U.S. 103, 105 (1965), the Court spoke of the intolerable delay in "desegregating school systems." Shortly thereafter, the Court drew a distinction between the desegregation of the school system, which required a transitional period, and the immediate right of an individual student to be admitted to a school from which he had been excluded because of his race. And see Rogers v. Paul, 382 U.S. 198, 199-200 (1965); Singleton v. Jackson Municipal Separate School District, 355 F.2d 865 (C.A. 5, 1966). The same distinction had previously been drawn by this Court in another context in Gibson v. Board of Public Instruction of Dade County, 272 F.2d 763 (C.A. 5, 1959), and in Mannings v. Board of Public Instruction of Hillsborough County, 277 F.2d 370 (C.A. 5, 1960).

problems involved in "a transition to a racially nondiscriminatory school system" and for that reason permitted desegregation to take place "with all deliberate speed." Nothing less than the reorganization of school systems was required, and that involved both adjustments in the ever-recurring decisions and actions by the school boards as well as their undertaking affirmative action to create and establish, in the place of the unconstitutional dual system, a unitary, nonracial system. This is the central, dominating theme of the original panel's opinion in these cases, and it has its basis in the decisions of the Supreme Court, this Court, and other courts of appeal.

In Baldwin v. Morgan, 287 F.2d 750, 754 (C.A. 5, 1961) this Court stated:

> What is forbidden is the state action in which color (i.e., race) is the determinant. It is simply beyond the constitutional competence of the state to command that any facility either shall be labeled as or reserved for the exclusive or preferred use of one rather than the other of the races.
>
> * * *
>
> This is not to say that integration in all activities must be governmentally compelled. We, and others, have clearly indicated to the contrary. City of Montgomery, Alabama v. Gilmore, 5 Cir. 1960, 277 F.2d 364, at page 369 and notes 5 and 6. But the State

> may not either compel segregation in use or the maintenance or making of separate facilities where the criteria is race or color.

In Northcross v. Board of Education of City of Memphis, 302 F.2d 818 (C.A. 6, 1962) the Court of Appeals for the Sixth Circuit said, referring to the Brown decision:

> Since that decision, there cannot be "Negro" schools and "white" schools. There can now be only schools, requirements for admission to which must be on an equal basis without regard to race.
>
> The trial judge found that the defendants do not operate a compulsory biracial school system. It might be said that by reason of the transfer aspect of the law, it is not compulsory. The real question is, Do they maintain separate schools? The first Brown case decided that separate schools organized on a racial basis are contrary to the Constitution of the United States.
>
> We urge the defendants herein to adopt and submit to the District Court some realistic plan for the organization of their schools on a non-racial basis, in "full compliance" with the mandate of the Supreme Court and to do so "with all deliberate speed." 302 F.2d, at 823-824.

This Court has required the elimination of the racial assignment of faculty and school personnel, Singleton v. Jackson Municipal Separate School District, 355 F.2d 865, 870 (C.A. 5, 1966); Davis v. Board of School Commissioners of Mobile County, 364 F.2d 896, 904 (C.A. 5, 1966); and had previously allowed district courts to require the end of such racial assignments and "an end of approving budgets, making funds available, approving employment contracts and construction programs, and approving policies, curricula and programs designed to perpetuate, maintain or support a school system operated on a racially segregated basis . . ." Board of Public Instruction of Duval County v. Braxton, 326 F.2d 616, 620 (C.A. 5, 1964).

A three-judge District Court for the Middle District of Alabama entered an order on July 13, 1964, enjoining the State Board of Education from:

> Failing, in the exercise of its control and supervision over the public schools of the State, to use such control and supervision in such a manner as to promote and encourage the elimination of racial discrimination

> in the public schools, rather than to prevent and discourage the elimination of such discrimination.

Lee v. Macon County Board of Education, Civil Action No. 604-E (M.D. Ala., July 13, 1964), opinion reported 231 F. Supp. 743, 756 (M.D. Ala., 1964). As shown by our annotation of the proposed decree (see Attachment B), courts have required other provisions to effectuate the disestablishment of the racially segregated systems.

In Wanner v. County School Board of Arlington County, 357 F.2d 452, 454 (C.A. 4, 1966) the Court of Appeals for the Fourth Circuit said:

> If a school board is constitutionally forbidden to institute a system of racial segregation by the use of artificial boundary lines, it is likewise forbidden to perpetuate a system that has been so instituted. It would be stultifying to hold that a board may not move to undo arrangements artificially contrived to effect or maintain segregation, on the ground that this interference with the status quo would involve "consideration of race." When school authorities, recognizing the historic fact that existing conditions are based on a design to segregate the races, act to undo these illegal conditions -- especially conditions that have been judicially condemned -- their effort is not to be frustrated on the ground that race is not a permissible consideration. This is not the "consideration of race" which the Constitution discountenances.

The thirteen years of litigation following Brown have primarily focused on one narrow task -- the elimination of the use of dual attendance zones for assigning students to schools. It has primarily been concerned with achieving the right of individual Negroes to attend schools reserved exclusively for whites. The resistance by the school authorities has been so widespread and intense even on this one aspect that the full scope of the duty imposed on the school authorities by Brown has been obscured. However, virtually all school systems have finally acknowledged their obligation to eliminate the use of dual attendance zones, and they are committed to doing so for all grades commencing with the 1967-68 school year. The focus is then shifting to the other tasks required to transform a system organized on the basis of racial separatism into a unitary, non-racial system, and the resistance has not surprisingly shifted to this front. The defense now interposed, in reliance upon language of the Court in Briggs v. Elliott, 132 F.Supp. 776 (E.D. S.C., 1955), is: "We are willing to let Negro students into white

schools, if they want to, but that is all we may be required to do." This response fails to recognize, however, that the racial discrimination consists not only of excluding Negroes from the white schools, but in maintaining separate schools which the state differentiates on a racial basis. While Briggs was necessarily concerned with an official policy of totally excluding Negroes from certain schools, the more recent cases are necessarily concerned with other aspects of the dual system. It is the entire system that must be disestablished. The maintenance in any manner of schools for Negroes upon the basis of their race is a discrimination against the Negroes of the community, as a group and as individuals. It is even a discrimination against the Negro attending a traditionally white school. It denotes the inferiority of his race and of him as a member of that race. Accordingly, this Court should make it unmistakably clear that the ultimate constitutional obligation of the school board is to cease maintaining separate schools for Negroes and whites, to tell the school boards that

this obligation requires something more than the negative act of eliminating dual attendance zones based on race, and to begin specifying what more is required for those school boards that refuse to use their own experience and knowledge to formulate a meaningful plan for bringing an end to the dual system.

One area of immediate concern is the method of assigning students to schools: What is an acceptable substitute for dual zoning? Certainly the method approved below in the three Alabama cases, viz, that of assigning children to schools on the basis of racial segregation, though permitting them to apply for a transfer, is inherently inadequate. That method of student assignment contains no prospect for reorganizing the dual system into a unitary system. The method approved in the four Louisiana cases, improperly labelled by the school authorities as "freedom of choice," is also inherently inadequate. It does not give the child a right to choose the school he will attend, but instead merely gives him a right to apply to a school, reserving to the boards the right to reject a choice if space is

available in a "comparable" school closer to the student's home. The theory of a method properly labelled "freedom of choice," which was not adopted by any of the school authorities in these cases, is that any child has the right to choose the school he wishes to attend, subject to the limitation of space being available in the school chosen. In contrast to the method of student assignment accepted below in the Alabama and Louisiana cases, this freedom of choice method is not inherently inadequate. We recognize that is not a normal method of administering a school system, or assigning students to schools; but we believe that it has some prospect of working, of serving as the method of student assignment in a unitary, non-racial school system. However, we believe that the prospect will never materialize unless something more is done by the school board than to say to all students, "You now have a choice."

What more is required than formally holding out to all students a choice of schools? It is to this recurrent question that the proposed decree is addressed,

and it is in response to the same question that the original panel in these cases formulated its decree. The purpose was not to attempt to destroy "freedom of choice," as some of the petitioners have charged. Instead, we were merely attempting to specify certain fundamental steps that must be taken in order to permit the choice to be made in a manner and in a context that will give the freedom of choice method of student assignment a chance of contributing to the school board discharging its constitutional duty of operating a unitary, non-racial school system.

Some of these steps relate to procedures of extending and exercising the choice, such as notice requirements, the method of indicating a choice, and the process of enrollment following the choice. These steps are designed to insure that the choice is being extended to all, and to insure that students are actually assigned to schools on the basis of their choice. Other steps are aimed at assuring that there is no interference with the exercise of the choice that would make it less than free. Included in this second category are provisions

such as those that preclude school officials from influencing students to go to the schools to which they were previously assigned under the dual zone system, or from denying school transportation to students choosing to go to a school attended by members of the opposite race. Finally, some of the steps, such as those relating to faculty desegregation and school construction, are designed to prevent state engendered racial factors from influencing the choice.

We stress, however, that the school authorities and the courts must not limit their concern to perfecting a method of student assignment to replace the dual zoning. Other action must be taken to reorganize the dual system, quite apart from the method of student assignment, and these steps should be undertaken along with and as indispensable supplements to the elimination of dual zoning. They have an independent basis in the duty of the school board to cease maintaining a dual school system. New schools should be planned and faculty must be allocated, for example, in a manner designed to eradicate the dual system, and to transform it into a unitary system, not organized on the basis of the principle of racial separation.

V

IN THESE CASES, THIS COURT SHOULD REQUIRE THE ENTRY OF DETAILED DESEGREGATION DECREES AND SHOULD DECLARE THAT THIS DECREE IS THE STANDARD FOR ALL SCHOOL DISTRICTS OPERATING FREE CHOICE PLANS WITHIN THE FIFTH CIRCUIT

The preceding two sections of this brief together demonstrate that the seven school boards now before this Court are still very far short of compliance with their Constitutional obligations to reorganize their dual school systems into unitary school systems. The narrow question is what this Court should do about it by way of directions to the district courts. We urge that each district court be directed to adopt a specific and detailed decree. The broader question is whether it is sound judicial administration to declare that this decree should be used as a model for free choice plans throughout the circuit.

The inadequacy of the plans here involved is compounded by the fact that they are so unspecific as to detail. Practical administrative problems are not dealt with. Such questions as "Who can sign the choice forms? What happens if a student fails to make a choice? How long should the choice period be? How many choice forms have been returned?" are questions left unanswered in the plans approved in the lower court.

It has been argued that to remove from the school board the task of drafting free choice plans undermines school responsibility. Deference to local responsibility for the administration of school systems is an established principle in the law of school desegregation. We endorse it. However, it disserves the principle of school responsibility to place upon school boards the difficult and technical task of articulating judicial standards and formulating workable mechanics of free choice plans. The result is too often an inadequate plan which necessitates further involvement of the federal courts in local school affairs. We think it far better for the court to make legal obligations of local officials as clear as possible and to utilize the Guidelines to fully spell out the mechanics of free choice. Local responsibility will then focus on compliance.

Since the second Brown decision, there have been significant developments in the approach to judicial relief to achieve compliance with the Constitutional obligation. First, because of the nature of transition itself and the flexibility of equitable jurisdiction the form and content of relief has progressively changed. Second, the 1964 Civil Rights Act has furnished an

independent enforcement agency with independent sanctions to achieve compliance with the Constitutional obligation. Third, the school boards and many of the district courts have come to rely on this Court for determining the form and content of the relief.

We conclude from this that this Court should now adopt and require the use of a detailed desegregation decree in these seven cases which will serve as a model for the district courts in this Circuit.

A. The Content of the Proposed Decree is Properly and Necessarily More Specific and More Exacting than Those Entered at Previous Stages of Transition

In two principal respects the content of the proposed decree is more specific and more exacting than decrees previously entered by this Court -- the procedures for the operation of the freedom of choice plan are spelled out in detail, and the provisions relating to faculty desegregation and construction are more specific.

The development of appropriate transitional relief to achieve compliance with the Brown decisions is not a static process, but requires progressively more exacting standards of relief as time goes on, until desegregation is complete.

In the second Brown decision, the Supreme Court provided for equitable relief to be formulated to facilitate transition to a racially non-discriminatory school system "at the earliest practicable date."

Over the last twelve years since that decision, both the Supreme Court and the Court of Appeals for the Fifth Circuit have become more insistent on the prompt and effective implementation of means to bring about full constitutional compliance. In Goss v. Board of Education, 373 U.S. 683, 689 (1964) the Supreme Court indicated that the passage of time made it necessary to apply the "deliberate speed" test in a different context. In Watson v. City of Memphis, 373 U.S. 526, 530 (1963) the Supreme Court spoke of the changing and more exacting nature of the remedies:

> Given the extended time which has elapsed, it is far from clear that the mandate of the second Brown decision requiring that desegregation proceed with "all deliberate speed" would today be fully satisfied by types of plans or programs for desegregation of public educational facilities which eight years ago might have been deemed sufficient.

See also Bradley v. School Board, 382 U.S. 103 (1965); Rogers v. Paul, 282 U.S. 198 (1965); Griffin v. County School Board of Prince Edward County, 375 U.S. 391 (1963); and Calhoun v. Latimer, 377 U.S. 263 (1964).

This recognition that relief must change and become more exacting and the transition to a non-racial school system accelerated was reaffirmed in subsequent decisions of this Court. In Price v. Denison Independent School District, 348 F.2d 1010 (C.A. 5, 1966), at 1012 this Court quoted from Ross v. Dyer, 312 F.2d 191 (C.A. 5, 1963) at 194:

> ". . . it is now clear that even though the 1960 order prescribes a plan in specific detail, this is not the end of the matter. The District Court of necessity retains continuing jurisdiction over the cause. This means that it must make such adaptations from time to time as the existing developing situation reasonably requires to give final and effectual voice to the constitutional rights of Negro children." (emphasis added)

In Davis v. Board of School Commissioners of Mobile County, 364 F.2d 896, 898 (C.A. 5, 1966), the Court pointed out that "it has been the duty of appellate courts to interpret and reinterpret" the meaning of "deliberate speed" over the years.

The Mobile County School litigation had been considered by the Court of Appeals on three previous occasions. In Davis I the Court set forth no specific relief standards, but sent the case back to the District Court for a prompt determination of the plaintiffs'

motion for a preliminary injunction. The District Court denied the motion, and in Davis II the Court of Appeals ordered the granting of an injunction pending appeal, ordering the desegregation of one grade a year by application of the Pupil Placement Law. In Davis III, the Court of Appeals reversed the District Court's approval of the desegregation plan, and required the abolition of dual school zones, shortened the time allowed for complete desegregation, required that the plan apply to all new students coming into the system whether or not they were entering then-desegregated grades, and required that proper notice be given students and parents of their rights under the plan. The Court also, in Davis III, directed the District Court to be guided by the opinion in Armstrong v. Board of Education, 333 F.2d 47 (C.A. 5, 1964), decided the same day.

In Davis IV the Court of Appeals required further and more exacting relief. It required the implementation of the absolute right to transfer out of a segregated school in a grade not yet covered by the desegregation plan, accelerated the rate of desegregation by the fall of 1967, required the allowance of transfers by Negroes out of Negro schools into white schools to correspond to

the right of white students to transfer out of Negro schools to white schools, required the allowance of the transfer of Negro students to white schools to take particular courses not offered in Negro schools, and required an "end to the present policy of hiring and assigning teachers according to race by the time the last of the schools are fully desegregated for the school year 1967-68." 364 F.2d at 904.

The Davis litigation is one of many possible examples of how, in one school district, this Court found it necessary, in view of the passage of years since Brown and the inadequacies of past relief, to impose changing and progressively more exacting requirements for the desegregation plan.

This Court has recognized that the transitional process requires increasingly more exacting standards of relief as time goes on. During the more recent part of the transitional period that we are still in, the Congress of the United States focused on the necessity of acting to eliminate the dual system. As the majority in the Jefferson panel points out in

Part II A of its opinion, Congress recognized the need to declare that school desegregation was the law of the land -- a need arising not from any lack of understanding of the constitutional obligation but from a failure of state authorities to perform their obligation. Thus, it is not surprising that following the passage of the Civil Rights Act of 1964 federal courts became more exact in insisting that results be accomplished in desegregating the public schools. The proposed decree which we urge this Court to enter in these cases recognizes that such relief has grown more exacting and gives the specificity necessary for the guidance of local school officials and district courts, while still allowing room for additional development of transitional relief as the courts determine to be necessary or appropriate.

B. This Court Should Adopt the Decree Set Forth in Appendix A in the Earlier Decision of a Panel of this Court

We have demonstrated above that the plans for desegregation approved by the courts below in these seven cases are inadequate, and that this Court should enter a decree setting forth detailed standards and procedures for the guidance of the appellee school boards in the desegregation of their schools. The proposed decree permits these Boards to use a free choice plan. The mechanics are set forth to insure that the plans will operate fairly and equally as to all students.

The standards and procedures embodied in the proposed decree are supported by prior judicial decisions and generally follow the Guidelines established by the Department of Health, Education and Welfare. It is entirely proper and desirable for the federal courts to consider and utilize these Guidelines in the cases before the court.

There can be no doubt that the 1964 Civil Rights Act signified a change. As is demonstrated in Part I of the Jefferson opinion, it is a change in the method of achieving compliance with the law of the land with

respect to school desegregation. Where in the past the courts were acting essentially alone, now the Congress and the Executive are also contributing. The 1964 Civil Rights Act represents a commitment by the entire country and signifies the beginning of an effort by the entire federal government to bring public school operation into compliance with the Constitution. Congress declared the law and provided an additional powerful sanction -- fund termination. It did not confer any new authority on the courts, nor did it take any away. It did provide an additional tool to speed up compliance. Thereafter two branches of the federal government functioned independently, both toward achieving a common end. One with the sanction of an injunction and contempt; the other with the sanction of withdrawal of federal funds. There was no unified, joint endeavor but rather two complementary efforts. The court fixed the constitutional standards and in the individual case before it decided on what was effective relief; HEW furnished the administrative, mechanical details. In a sense it fleshed out the skeleton, and it continuously, independently and with initiative audited performance. In view of this scheme, common sense, experience and settled constitutional

doctrine, all suggest the need for coordination. The majority opinion in Jefferson recognized the chaos that would occur if school boards that accepted federal funds thought that they could run to court to avoid compliance. Coordination and symmetry seem as obviously required here as for a pilot who must keep the two engines of his plane synchronized while in flight. The Guidelines embody in their substance the standards developed by the decisions of the courts. They fill in the detailed mechanics of operation based on the expertise of the Office of Education. They indicate some rules of thumb which the Office of Education will use in auditing performance.

This and other courts have recognized the desirability of paralleling the HEW guidelines, beginning with Singleton v. Jackson Municipal Separate School District, 348 F.2d 729, 731 (1965). This reliance has been reaffirmed in three subsequent cases by this Court prior to the December 29, 1966 decision in the instant case. Price v. Denison Independent School District, 348 F.2d 1010 (1966); Singleton v. Jackson Municipal Separate School District, 355 F.2d 865 (1966); and Davis v. Board of School Commissioners of Mobile County, 364 F.2d 896 (1966). The Eighth

Circuit and district courts in the Fourth Circuit have also given great weight to the Guidelines. Kemp v. Beasley, 352 F. 2d 14 (8th Cir. 1965); Smith v. Board of Education of Morrilton School District, 365 F. 2d 770 (C.A. 8, 1966); Kier v. County School Board of Augusta County, 249 F. Supp. 239 (W.D. Va., 1966); Wright v. County School Board of Greenville County, 252 F. Supp. 378 (E.D. Va., 1966); Miller v. Clarendon County School District No. 2, 253 F. Supp. 552 (D.S.C. 1966).

The reliance by the courts on administrative guidelines has been approved and, where appropriate, even required by the Supreme Court. See, for example, Skidmore v. Swift & Co., 323 U.S. 134 (1944) discussed fully on pages 4-7 of the Supplemental Memorandum of the United States filed in this case in June, 1966.

We again emphasize that these Guidelines are based on principles of relief enunciated by the courts:

1. Desegregation plans based on free choice must grant a genuine and untrammelled freedom to choose. See, e.g., Gaines v. Dougherty County Board of Education, 334 F.2d 983 (5th Cir., 1964); Kemp v. Beasley, 352 F.2d 14 (8th Cir.,

1965); Kier v. County School Board of Augusta County, Va., 249 F.Supp. 239 (W.D. Va., 1966).

2. Pupils have a right to attend schools which are staffed on a nonracial basis. See, e.g., Rogers v. Paul, 382 U.S. 198 (1965); Bradley v. School Board of City of Richmond, 382 U.S. 103 (1965); Davis v. Board of School Commissioners of Mobile County, 364 F.2d 896 (5th Cir., 1966); The Board of Education of the Oklahoma City Public Schools v. Dowell, No. 8523 (10th Cir., Jan. 23, 1967).

3. Services, facilities, activities and programs must be made available without regard to race. See, e.g., Singleton v. Jackson Municipal Separate School District, 355 F.2d 865 (1966).

The proposed decree set forth in Appendix A to the December 29, 1966 decision in these cases embodies these principles, drawing on the Guidelines for the mechanics. Attachment B to this brief is an annotation

of the proposed decree, showing that each specific provision is supported by the case law.

The appellees' briefs argue at considerable length that the Guidelines violate the Civil Rights Act of 1964. The North Carolina Board of Education, as amicus curiae, requests that the Court not consider the question of the validity of the Guidelines, urging that that question is not here in issue. We agree that that issue is not technically before the Court. But the question of whether the Guidelines are an appropriate guide for effective relief in a Fourteenth Amendment case is before the Court. We believe that they are, and that the Guidelines conform to Fourteenth Amendment standards.

The appellees urge three grounds for their contention that the Guidelines are invalid. These grounds are that the Guidelines were not formally approved by the President, that they call for faculty desegregation, and that they call for racial balance.

As to Presidential approval, the fatal flaw in the defendants' position is that they fail to recognize that the Guidelines, if they can be called regulations at all, are interpretative -- not rule making -- a mere statement of the enforcement policy of the Commissioner of Education, and as such they are

not subject to the Title VI requirement of Presidential approval.[12/] As to teacher desegregation, the defendants ignore the fact that assignment of teachers on the basis of race denies students their right to a non-racial education. And as to "racial balance," nothing in the Guidelines requires the assignment of students to public schools in order to overcome racial imbalance. Attachment A to this brief discusses these points in more detail and sets forth the relevant cases and legislative history.

12/ Our position is supported by traditional administrative law doctrine, by an analysis of the evolution and nature of the Guidelines, and by a review of the legislative history relating to the requirement of Presidential approval. See Attachment A to this brief.

C. Adequate Relief in These Desegregation Cases Requires this Court to Enter a Specific Decree for the Guidance of School Officials and Courts

The second Brown decision anticipated that district courts and school boards would fashion and effectuate transitional remedies that would bring about the "transition to a racially nondiscriminatory school system" in each district. 349 U.S. 301. Two years later, this Court expressed the longstanding order of responsibilities as "first the school authorities, then the local district court, and lastly the appellate courts." Rippy v. Borders, 250 F.2d 690, 693 (C.A. 5, 1957). Unfortunately, this anticipation is unfulfilled. With a few rare exceptions, the school boards have delayed as long as the courts have let them.[13/] More than one complete generation of school children has passed through the schools since Brown I, and yet many systems have taken no significant steps toward desegregation.

13/ When the President of the Caddo Parish School Board was questioned by the Court as to whether he had any intentions of changing the longstanding custom and practice of maintaining separate schools for Negro and white children in Caddo Parish unless he was ordered to do so by order of the court, he answered that he would continue to maintain a dual school system in the Parish (Caddo, R. 88-89).

Many district courts have been understandably reluctant to interfere with local school administration. Almost all of them look to the Court of Appeals more and more for instruction, rather than using their own creative equity powers to fashion and effectuate meaningful relief.

This Court has found it necessary to direct district courts to enter injunctions, and has set forth the text of such orders in its opinions. In Gaines v. Dougherty County Board of Education, 334 F.2d 983, 984 (C.A. 5, 1964) this Court stated:

> We have carefully considered the record in this case, and conclude that a minimum requirement for the Board of Education of Dougherty County is that it desegregate the first two grades of school as heretofore required by the preliminary order entered by this Court, and that it also commence desegregation with the twelfth grade, in order that every Negro child in the Dougherty County School System have at least an opportunity to enjoy a desegregated education during his school career. We conclude that this can be accomplished very simply by the trial court's entering an injunction along the following terms:

The Court of Appeals then set forth the order in two full columns of the Federal Reporter. Similar action has been taken by this Court in other cases. Davis v. Board of School Commissioners of Mobile County, Alabama, 322 F.2d 356 (C.A. 5, 1963); Stell v. Savannah-Chatham County Board of Education, 318 F.2d 425 (C.A. 5, 1963).

The Jefferson County, Bessemer, Bossier Parish, and Claiborne Parish cases now before this Court were all remanded by this Court on August 17, 1965, for reconsideration in the light of Singleton I and Price, supra, 349 F.2d 1020-1022 (C.A. 5, 1965). Yet the plans in those districts, even though subsequently approved by the District Courts, still fall far short of meeting current standards. For example, the plans omitted any mention of faculty desegregation or the Singleton transfer rule.

In the Western District of Louisiana, in United States v. LaSalle Parish School Board, Civil Action No. 12178 (W.D. La., August 26, 1966), the District Court stated:

> The Court pretermits consideration of desegregation of teaching and administrative personnel employed by LaSalle Parish School Board in the public school system under its jurisdiction, pending publication of the decision of the United States Court of Appeals for the Fifth Circuit of the consolidated appeals heard on oral argument May 24 and 25, 1966, and such hearings as may be required.

In Part II(E) of the opinion in Jefferson, Judges Wisdom and Thornberry state that this Court's experience argues for uniform, circuit-wide standards as to the

provisions of free choice plans. The statistical summaries before the Court show the burden on the Court, the orders in the 150 school cases show the wide lack of uniformity and the case histories show the delay in implementing the decisions of this Court and the variances between Circuit directive and district court order. Each of these factors inevitably led to delay and with it the decline of local responsibility. What happened in fact was far from "deliberate speed." There was no movement at all.

CONCLUSION

For the reasons set forth in this brief, and in our original and supplemental briefs previously filed, we respectfully request this Court to reverse the orders of the District Courts and to enter an order directing the District Courts to adopt the decree entered by this Court on December 29, 1966.

Respectfully submitted,

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Certificate of Service

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ATTACHMENT A

THE HEW GUIDELINES MEET THE
REQUIREMENTS OF THE
CIVIL RIGHTS ACT OF 1964

I. TITLE VI OF THE 1964 CIVIL RIGHTS ACT DOES NOT REQUIRE PRESIDENTIAL APPROVAL OF THE HEW GUIDELINES

A. The traditional distinction between "Legislative Regulations" and "Interpretative Regulations."

Exercises of a rule-making power granted to an administrative agency by Congress have, according to traditional administrative law doctrine, been called "legislative regulations." See generally 1 Davis, Administrative Law §§5.01-5.11 (1958). Legislative regulations are said to have "the status of law", which means that they are "binding" on individual parties, and even on a court if it is determined by the court that they are (a) within the grant of the rule-making power, (b) reasonable, and (c) issued pursuant to proper procedure.

Traditional administrative law doctrine also recognizes another category of agency announcements, which for lack of a better term have been called "interpretative regulations." The phrase "interpretative regulation" is misleading because what is involved is not a "regulation", a rule of law, but rather a judgment or view of the agency on a particular question and it is also misleading because the distinction between a "legislative regulation" and a so-called "interpretative regulation" is not one related to the content of the agency

announcement. The content of a so-called interpretative regulation could equally be contained in a legislative regulation. The essential difference between a legislative regulation and an interpretative regulation is "whether or not it is issued pursuant to a grant of law-making power." 1 Davis, Administrative Law p. 302 (1958). An interpretative regulation is, as we understand it, a judgment or policy statement of the agency that is not formally expressed in a rule or regulation issued pursuant to the statutory rule-making power of the agency.

We claim no more status for the guidelines than that of so-called interpretative regulations, and it is therefore important to note their characteristics in some detail.

First, and most importantly, because so-called interpretative regulations are not an exercise of whatever rule-making power may be given to an agency, they, unlike legislative regulations, do not have the "status of law" nor are they "binding." They are subject to plenary review by a court, and a court can substitute its judgment for that of the administrative agency on the issue resolved in the interpretative regulations. The so-called interpretative regulations are "authoritative" in only two respects: (a) They guide the enforcement action of the administrative agency. Although the agency is theoretically free to disregard or alter these statements

of policy in specific cases, or at any time in the future, in the interest of fairness and of establishing continuity and confidence in its enforcement program, as a practical matter, they are a generally reliable guide to what the agency's enforcement action will be and what the agency thinks it should be.[1/] (b) The so-called interpretative regulations have the power to persuade the judiciary. They represent the judgment of the administrative agency, and the courts can look to them for guidance. Their authoritativeness in this respect will vary depending on such factors as the extent to which the subject matter is within the special competence of the administrative agency, its consistency with prior administrative pronouncements and with standards announced by the courts in construing the same or similar concepts, the experience of the agency, the thoroughness in the consideration of the regulation by the agency, and the fairness and informativeness of the

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1/ The practical impact of the "interpretative regulation" on the conduct of the affected parties does not alter their nature. For example, in Frozen Food Express v. United States, 351 U.S. 40, 44, 45 (1956), the Supreme Court recognized that a so-called interpretative regulation of the Interstate Commerce Commission, which was issued as "Report" entitled "Determination of Exempted Agricultural Commodities", would have "an immediate and practical impact on carriers", since the carriers could act contrary to the policies stated in Report only "at the risk of incurring criminal penalties." See Jaffe, Judicial Control of Administrative Action, pp. 405-406 (1965), discussing the case.

procedures used by the agency in formulating its position. See generally Skidmore v. Swift & Co., 323 U.S. 134, 140 (1944) (involving the "Interpretative Bulletins" of the Administrator of the Wages and Hours Division of the Department of Labor, from which Congress, in enacting the Fair Labor Standards Act of 1938, withheld a general rule-making power).

Second, in issuing so-called interpretative regulations no formal procedures, including the procedures prescribed by statute for the exercise of the statutory rule-making power need be followed. Section 4 of the Administrative Procedures Act, for example, expressly states that the notice and hearing requirements imposed by that statute for rule-making shall not apply to "interpretative rules, general statements of policy, [and] rules of agency organization, procedure, or practice."[2/] The procedural requirements may be ignored, and the agency may be relieved of the necessity

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2/ 5 U.S.C. 1003 (a)(1964 Ed.) The Senate Committe indicated that it understood the technical meaning of the phrase "interpretative rules." See Senate Committee Print, Sen. Doc. No. 248, 79th Cong., 2d Sess., p. 18 (1946). The distinction between legislative and interpretative regulations was well recognized in the scholarly literature at the time. See, e.g., Lee, Legislative and Interpretative Regulations, 29 Geo. L.J. 1 (1940); and Rep. Att'y. Gen. Comm. Ad. Proc. 90-100 (1941), quoted in America President Lines, Ltd. v. Federal Maritime Commission, 316 F.2d 419, 422 (D.C. Cir., 1963).

of complying with them only at the cost of lessening the authoritativeness of its ruling or judgment. The scope of judicial review is substantially broadened because these rulings or judgments are not issued pursuant to the rule-making power in conformity to the procedural requirements for exercising that power.

Third, the so-called interpretative regulations may be published in many forms. They may consist of general policy statements of the agency, press releases, letters of opinion, speeches, pamphlets, handbooks, bulletins, or instructions, or they may find more formal expression and actually be designated "regulations" by the administrative agency. The mere fact that the policy or judgment of the agency is of general applicability and is published in the Federal Register or in the Code of Federal Regulations does not alter their nature, making them an exercise of a statutory rule-making power. For example, the Interpretative Bulletin of the Wage and Hour Division, the classic example of the so-called interpretative regulation involved in Skidmore v. Swift & Co., is of general applicability, stating the administrator's

views as to the coverage of the Act, and is published in the Code of Federal Regulations.[3/]

The nature of this traditional administrative law category called "interpretative regulations" can be further illustrated by discussing a leading case, Gibson Wine Co., Inc. v. Snyder, 194 F.2d 329, decided in 1952 by the Court of Appeals for the District of Columbia, a court that has played a prominent role in the formulation of administrative law in our country. That case involved a challenge to the ruling of the Deputy Commissioner of Internal Revenue, who was charged with the

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3/ See 29 C.F.R., Parts 775 and 776. For other examples as to the form of so-called interpretative regulations see generally 1 Davis, Administrative Law, p. 290 n.20 ("The Federal Register for September 27, 1946, contains a large compilation of SEC interpretative regulations and related materials, called releases, letters or opinion of officers, letters of the Commission, statements of the Commission, and the like"), p. 306 ("Nearly all the regulations issued by the Secretary of Agriculture under the Food and Drug Act of 1906 concerning standards for food were interpretative--merely a 'guide for officials of this department in enforcing the Food and Drug Act'"), and p. 311 (discussing the fact that both interpretative and legislative regulations of the Treasury Department are published in the Federal Register and the Code of Federal Regulations).

administration of the Federal Alcohol Administration Act.[4/] The pertinent statute granted him a rule-making power, but required that exercises of that power be approved by the Secretary of the Treasury. A formal regulation had been issued sometime ago with the approval of the Secretary, but that regulation merely stated that a wine made from one kind of fruit shall be designated by the word "wine" qualified by the name of the fruit. The question frequently arose as to whether wine made from boysenberries should be labelled "blackberry wine" or boysenberry

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4/ Section 2(d) of the Federal Alcohol Administration Act, 49 Stat. 977 (1935) provides:

> The Administrator is authorized and directed to prescribe such rules and regulations as may be necessary to carry out his powers and duties. All rules and regulations prescribed by the administrator shall be subject to the approval of the Secretary of the Treasury.

The Court of Appeals, 194 F. 2d at 330 n.2 states:

> The Federal Alcohol Administration and the office of the Administrator were abolished and their functions transferred to the Alcohol Tax Unit of the Bureau of Internal Revenue and the Deputy Commissioner of Internal Revenue in charge of that unit.

wine." There was no provision in the formal legislative regulation covering this issue and accordingly the Deputy Commissioner ruled, stating that such wine should be labelled "boysenberry wine." That ruling was not approved by the Secretary. The District Court reviewed the ruling of the Deputy Commissioner on a plenary basis, concluded that the ruling was "correct" and denied the plaintiff-appellant injuctive relief. The Court of Appeals affirmed, saying (194 F.2d, at 331-332):

> The first point presented by appellant is that the Deputy Commissioner's ruling of November 30, 1949, was an attempt to modify or amend a regulation and was invalid because it was not approved by the Secretary, as required by the statute, and no hearing was had prior to the promulgation of the ruling, as required by the statute and by Section 4 of the Administrative Procedure Act. The appellee officials say that the Deputy Commissioner's ruling was not an amendment or modification of a regulation but was merely an interpretative ruling. They say that interpretative rulings are within the authority of the Deputy Commissioner and are not within statutory requirements as to notice and hearing.
>
> The distinctive characteristics of interpretative rulings, as contrasted with so-called regulations, have long been recognized. Administrative officials frequently announce their views as to the meaning of statutes or regulations. Generally speaking, it seems to be established that 'regulations', 'substantive rules' or 'legislative rules' are

those which create law, usually implementary to an existing law; whereas interpretative rules are statements as to what the administrative officer thinks the statute or regulations mean.

* * *

We think the ruling of the Deputy Commissioner here under consideration was clearly an interpretative ruling. On its face it purported to be merely the opinion of the Deputy Commissioner as to the meaning of the regulation. In the action in the District Court the parties and the court treated it as an expression of opinion. We think that treatment was correct.

> Since the Deputy Commissioner's ruling was an interpretative one, it was not subject to the requirements of approval by the Secretary, of a hearing prior to promulgation, or of the rule-making procedure of the Administrative Procedure Act. Such exemptions have effect on the weight which the courts will accord to the administrative view and thus affect the limits of the judicial review.... (Footnotes giving statutory references omitted and emphasis added.)

See also Garelick Mfg. Co. v. Wellon, 313 F.2d 899 (D.C. Cir., 1963).

B. The Guidelines as a Public Statement of the Enforcement Policies of the Commissioner of Education.

The guidelines are not an exercise of the rule-making power conferred on the agency by Congress in section 602. They are a public statement of the

policies that will generally guide the Commissioner of Education in discharging his responsibility under the Act and the regulation that was issued under §602 to determine the adequacy of desegregation plans submitted to him. They are rules for the management of his shop, and thus fall in the traditional category in administrative law of the so-called "interpretative regulation," which, as discussed in the preceding section, are not regulations or rules of law regulating the behavior of others.

The way in which the guidelines evolved makes clear that they are merely a statement of the enforcement policies of the Commissioner, and that they were made public for the purpose of assisting the local school boards. Title VI, as part of the Civil Rights Act of 1964, was enacted in July,1964. On November 27, 1964, the Secretary of the Department of Health, Education and Welfare issued, with the approval of the President, a regulation establishing the basic legal framework for the enforcement of Title VI

by his department.[5/] 45 C.F.R., part 80. Section 80.4 (c)(2) required certain school districts to submit desegregation plans to the Commissioner of Education and it charged the Commissioner with the responsibility of determining whether the desegregation plans submitted were adequate to accomplish the purpose of Title VI and the regulation -- the elimination of racial segregation. The relevant portion of the regulation reads:

> (c) Elementary and Secondary schools. The requirements of paragraph (a) of this section with respect to any elementary or secondary school or school system shall be deemed to be satisfied if such school or school system . . . . (2) submits a plan for the desegregation of such school or school system which the Commissioner of Education determines is adequate to accomplish the purposes of the Act and this Regulation and provides reasonable assurance that it will carry out such plan . . .

The regulation did not seek to spell out what such a plan must include, but instead relied upon the judgment of the Commissioner of Education. The regulation required the school boards to take the first affirmative steps in formulating desegregation plans and to submit

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5/ Notice of hearing was not required for the promulgation of the regulation because section 4 of the Administrative Procedure Act exempts from the notice and hearing requirements of that section "any matter relating to . . . loans, grants, benefits or contracts, 5 U.S.C. 1003 (1964 ed.)

them for approval to the Commissioner. However, section 80.12(b) of the regulation directs the Commissioner, as the responsible department official, to issue to interested persons "forms and detailed instructions and procedures" for effectuating the regulation.

A need was soon recognized for the articulation of some of the standards that were to be used by the Commissioner of Education in judging the adequacy of desegregation plans. In response to this need a memorandum by F.W. Foster, Jr., Professor of Law at the University of Wisconsin and a consultant to the Office of Education, was published on March 20, 1965 in a magazine called the Saturday Review. (A copy of the article, of which this court may take judicial notice, is attached.) The editorial preface to the article states:

> The following memo is designed to provide specific guidelines to school authorities seeking to meet the terms of Title VI of the Civil Rights Act . . . . Mr. Foster's memo has no official status and does not bind the Office of Education in any fashion. Yet there is no doubt that it affects directly the thinking of the officials charged with the responsibility for the enforcement of Title VI as it applies to education.

One month later, on April 29, 1965, the Commissioner of Education in response to this same demand for an articulation of his enforcement policies issued and distributed to all school districts that had submitted an unacceptable plan, or that were in the process of preparing a plan, a

document that has become to be known as the 1965 guidelines. It was formally entitled "General Statement of Policies Under Title VI of the Civil Rights Act of 1964 Respecting Desegregation of Elementary and Secondary Schools." At that time, the statement was not published in the Federal Register. However, with time a need was recognized to make the statement more available to the public, and in August 1965 it was published in the Federal Register. 30 Fed. Reg. 9981 (August 11, 1965); 30 Fed. Reg. 10163 (August 14, 1965). The nature and purpose of the statement were clearly set forth in the Federal Register:

> Under §80.4(c) of the regulation issued by the Secretary and approved by the President (45 CFR 80.4(c)), the Commissioner has authority and responsibility for determining whether a desegregation plan submitted by an elementary or secondary school or school system desiring to receive Federal financial assistance is adequate to carry out the purposes of Title VI of the Civil Rights Act of 1964 . . . and the implementing regulation. . . . The following Part 180 describes the policies under which the Commissioner will make such determinations.

In order to conform his enforcement policies to his experience during the first year of operation of the Title VI program, the Commissioner in March, 1966, issued a revised set of guidelines, entitled "Revised Statement of Policies for School Desegregation Plans under Title VI of the Civil Rights Act of 1964." They were published in

the Federal Register on April 9, 1966 (31 Fed. Reg. 5623), with an explanation essentially similar to that which appeared upon the publication of the 1965 guidelines in the Federal Register.

The formal title and language of the guidelines indicate that they are a public statement of the enforcement policies of the Commissioner of Education, not regulations or rules of law. For example, the section that makes reference to percentages of Negro transferees, which section is perhaps the portion of the guidelines most strongly attacked by petitioners, makes it unmistakably clear that only the enforcement policies of the Commissioner, not regulations or rules of law, are being set forth therein. That section states, after specifying the percentages:

> "Where there is substantial deviation from these expectations, and the Commissioner concludes, on the basis of the choices actually made and other available evidence, that the plan is not operating fairly, or is not effective to meet constitutional and statutory requirements, he will require the school system to take additional steps to further desegregation."

C. The Legislative History of the Requirement of Presidential Approval.

We do not believe that the legislative history concerning the requirement of presidential approval is particularly instructive. We do believe, however, that it is consistent with our position and the foregoing analysis. First, there is no indication that Congress intended to preclude the Secretary from issuing rules and regulations under §602 which require school desegregation plans to be submitted to the Commissioner of Education as a condition of the extension of financial assistance for education, and which charge the Commissioner with determining whether the plans are adequate to fulfill the purposes of the Act. Second, there is no indication that Congress intended to have the Commissioner, in exercising this function, to be without discretion to formulate enforcement policies and to be totally controlled by regulations issued by the Secretary and approved by the President. The following analysis of the legislative history supports these contentions.

1. Genisis of the Requirement of Presidential Approval.

The requirement of presidential approval was not in the bill as introduced in the House by

Congressman Celler on June 20, 1963, 6/ nor in the version introduced on October 2, 1963 and reported out of Committee to the House for debate on November 20, 1963. 7/

6/ "Title VI -- Nondiscrimination in Federally Assisted Programs

"Section 601. Notwithstanding any provision to the contrary in any law of the United States providing or authorizing direct or indirect financial assistance for or in connection with any program or activity by way of grant, contract, loan, insurance, guaranty, or otherwise, no such law shall be interpreted as requiring that such financial assistance shall be furnished in circumstances under which individuals participating in or benefitting from the program or activity are discriminated against on the ground of race, color, religion, or national origin or are denied participation or benefits therein on the ground of race, color, religion, or national origin. All contracts made in connection with any such program or activity shall contain such conditions as the President may prescribe for the purpose of assuring that there shall be no discrimination in employment by any contractor or subcontractor on the ground of race, color, religion, or national origin."

7/ The pertinent portion of the bill reads:

"Section 602. Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, contract, or loan, shall take action to effectuate the provisions of Section 601 with respect to such program or activity. Such action may be taken by or pursuant to rule, regulation, or order of general applicability and shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken."

The latter version provided that administrative action to effectuate the nondiscrimination requirement of the Title "may be taken by or pursuant to rule, regulation or order of general applicability." In the course of debate on February 7, 1964, Congressman Lindsay offered an amendment to this version adding a requirement that the rule, regulation or order of general applicability be approved by the President.

The following is the entire discussion on the floor of the House that preceded the adoption of the amendment (110 Cong. Rec. 2499):

> MR. LINDSAY. Mr. Chairman, I offer an amendment.
>
> The Clerk read as follows:
>
> Amendment offered by Mr. Lindsay: On page 62, line 17, after the words "is taken" insert "no such rule, regulation or order shall become effective unless and until approved by the President".
>
> The CHAIRMAN. The gentleman from New York [Mr. Lindsay] is recognized.
>
> Mr. LINDSAY. Mr. Chairman, this amendment is designed to require that the President shall approve rules and regulations that are promulgated pursuant to Section 602 of Title VI.

I believe this amendment will be accepted by the chairman of the Committee on the Judiciary and the ranking minority member. The members of your committee feel that the rule-making power is so important in this area and can be so significant because of the latitude that this title by definition has to give to the executive in drafting rules and regulations that the Chief Executive should be required to put his stamp of approval on such rules and regulations - after, of course, the normal procedures have been followed in promulgating such rules and regulations.

Mr. CELLER. Mr. Chairman, will the gentleman yield?

Mr. LINDSAY. I yield to the chairman of the committee.

Mr. CELLER. As chairman of the Judiciary Committee, I approve the amendment of the gentleman from New York.

Mr. LINDSAY. I thank the chairman.

Mr. McCULLOCH. Mr. Chairman, will the gentleman yield?

Mr. LINDSAY. I yield to the gentleman from Ohio.

Mr. McCULLOCH. The amendment is an acceptable amendment to us.

Mr. SMITH of Virginia. Mr. Chairman, I should like to have a brief explanation of what the amendment would do.

Mr. LINDSAY. I yield to the gentleman from Virginia.

Mr. SMITH of Virginia. I thought the gentleman had yielded the floor.

Mr. LINDSAY. I had not yet yielded the floor. If the gentleman would like the floor on his own time, I shall be glad to yield the floor.

Mr. SMITH of Virginia. No. I should merely like to have a more clear idea as to what the amendment would do.

Is it the gentleman's thought or intent that the President shall personally approve every regulation that is made under this regulatory power?

Mr. LINDSAY. No, it is not.

Mr. SMITH of Virginia. What would it do, then?

Mr. LINDSAY. Pursuant to Title VI, rules and regulations will have to be promulgated, as the gentleman will note on lines 14 and 15 on page 62 of the bill. The rules, regulations and orders there required, which will have to be promulgated according to standard procedures, with hearing and the rest, would have to be approved by the President of the United States.

Mr. SMITH of Virginia. Then he would have to approve every one of these regulations personally.

Mr. LINDSAY. No; I did not say that.

Mr. SMITH of Virginia. I thought the gentleman did.

Mr. LINDSAY. The rules and regulations will be promulgated, and will have to be promulgated as indicated on the

lines 14 and 15 as I have mentioned, and are to be approved by the President of the United States if they are to be effective.

Mr. SMITH of Virginia. Did the gentleman not just say they had to be approved by the President?

Mr. LINDSAY. That is correct.

Mr. SMITH of Virginia. Then what does that mean? Would he have to approve them or would he not have to approve them?

Mr. LINDSAY. I refer the gentleman again to the language to which I referred, on lines 13 through 17 of page 62.

"Such action may be taken by or pursuant to rule, regulation, or order of general applicability and shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken."

It is those rules, regulations, or orders of general applicability the President would be required to approve. Very plainly stated.

Mr. SMITH of Virginia. Perhaps so. I still do not understand what the President would have to do, but I am happy to see any amendment agreed to by the gentleman from New York [Mr. Celler] and the gentleman from Ohio [Mr. McCulloch], so I am disposed to go along with it. I only wish I could get them to agree on my amendment to prohibit slavery.

Mr. POFF. Mr. Chairman, will the gentleman yield?

Mr. LINDSAY. I yield to the gentleman from Virginia.

Mr. POFF. Mr. Chairman, I am inclined to feel that the amendment is constructive in nature. I inquire, for the sake of the public: How will the President document his approval of the orders and regulations? Will his approval appear as an Executive order? Will it be published in the Federal Register?

Mr. LINDSAY. It will be published in the Federal Register.

Mr. POFF. I thank the gentleman.

Mr. JONES of Missouri. Mr. Chairman, I move to strike out the last word, for the purpose of clarifying the statement of the gentleman from New York.

I should like to have the attention of the gentleman from New York [Mr. Lindsay].

It seems, after you offered your amendment, you started wiggling around. I will read what the amendment says. I got a copy from the Clerk's desk. It says:

"No such rule, regulation or order shall become effective unless and until approved by the President."

Does it mean that the President has to approve every rule before it will become effective?

Mr. LINDSAY. That is correct; if it is applicable to this title and is of general applicability.

Mr. JONES of Missouri. The amendment says:

"No such rule * * * shall become effective unless and until approved by the President."

Mr. LINDSAY. That is correct.

Mr. JONES of Missouri. Is that not what the amendment says?

Mr. LINDSAY. That is correct.

Mr. JONES of Missouri. You ought to be able to answer the question "Yes" or "No."

Mr. LINDSAY. It must be a rule, regulation, or order of general applicability. If it is not a rule, regulation, or order of general applicability, I would assume that the President would not have to put his approval on it.

Mr. JONES of Missouri. The "such" refers back to that, but you were trying to wiggle out of it in the discussion of the amendment.

Mr. LINDSAY. Then, vote against the amendment if you do not like it.

Mr. JONES of Missouri. No. I am like Judge Smith. I want to do anything I can to improve this thing. Of course, I will vote against the bill.

Mr. LINDSAY. If the gentleman will yield further, I am sure he is trying to improve it, and we appreciate it.

Mr. JONES of Missouri. I am trying to make it "less worse."

I yield back the balance of my time.

> The CHAIRMAN. The question is on the amendment offered by the gentleman from New York [Mr. Lindsay].
>
> The amendment was agreed to.

No further changes in the presidential approval requirement were made in the course of the House debate, and on February 10, 1964, the bill passed the House, 110 Cong. Rec. 2805. The pertinent portion of what is now Section 602 read:

> Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, shall take action to effectuate the provisions of section 601 with respect to such program or activity. Such action may be taken by or pursuant to rule, regulation, or order of general applicability and shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation or order shall become effective unless and until approved by the President.

When the House bill came up for debate in the Senate, Senator Dirksen, on May 26, 1964, introduced an amendment in the nature of a substitute. 110 Cong. Rec. 11926. His substitute changed the relevant portion of section 602 to read as follows (id., at 11930):

Sec. 602. Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 601 with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President.

As can be seen from the text, this substitute combined the first two sentences in the House version into one sentence. The meaning was changed in that the agencies were now directed to issue rules and regulations to effectuate the substantive provisions of the Act, the rules and regulations issued were to be the framework within which all the administrative action was to be taken and the phrase "consistent with the achievement of the objectives of the statute authorizing the financial assistance" now modified the rules and regulations rather than, as it had in the House version, the "action" to be taken to effectuate the substantive provisions of the Act. There was no change in the sentence regarding presidential approval.

This version of section 602 was passed by the Senate on June 19, 1964, and finally signed into law on July 2, 1964. Prior to its passage in the Senate, several amendments were introduced during the course of debate relating to the requirement of presidential approval. Senator Thurmond proposed an amendment that would have required that Congress, rather than the President, approve the rules and regulations issued by each agency. 110 Cong. Rec. 13937. Senator McClellan proposed an amendment which would have postponed the effective date of the Title until six months after submission to Congress by the President of a report identifying all programs covered by the Title and informing Congress of the rules and regulations he had approved. 110 Cong. Rec. 9145. And Senator Ervin proposed to eliminate agency action as the primary enforcement technique and to substitute suits by the Attorney General based on sworn complaints. Under his proposal the agencies would have been authorized to withhold assistance only after a judicial determination in such a suit that there was a violation of 601 and no rule-making power was given to the agency. 110 Cong. Rec. 12548. All these amendments were defeated in the Senate.

2. Purposes Underlying the Requirement of Presidential Approval.

The requirement of presidential approval was, we believe, primarily thought of as a safeguard against arbitrary administrative action, and we in no way ignore the importance of that safeguard. 8/ Accordingly, all exercises of the rule-making power contained in §602 have satisfied that requirement, and the regulation so issued has established the basic administrative framework circumscribing the action of the Commissioner of Education. However, there is less of a need for such a check against arbitrary action with respect to policy statements such as the guidelines. They do not have the same force or status as regulations issued pursuant

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8/ This congressional purpose seems to require the President himself to personally exercise his responsibility and authority to approve regulations issued under section 602 and not to delegate this authority or responsibility to the Secretary of the Department of Health, Education and Welfare or to the Commissioner of Education, even though such delegation is explicitly allowed by the terms of 3 U.S.C. §301 (1964 ed.). This statutory power of the President to delegate his responsibility was not mentioned in the congressional debates on Title VI, but we assume that the overriding purpose of Congress in adopting the presidential approval requirement in section 602 would preclude such a delegation under 3 U.S.C. §301 (1964 ed.).

to the §602 rule-making power, and the safeguard against arbitrary action by the administrative agency lies in a broad scope of judicial review. While it is true that action taken on the basis of the §602 regulations is also subject to judicial review, the scope of review of such action is more limited than review of administrative action predicated on the guidelines. In reviewing particular action predicated on the guidelines, the court would decide for itself whether, for example, a desegregation plan rejected by the Commissioner is "adequate" for the purposes of the Act, using the guidelines only as a body of informed judgment. The scope of review would be as great as it would be if the Commissioner had not issued guidelines, but had merely judged the adequacy of plans on a case-by-case, ad hoc basis. This judicial safeguard against arbitrary administrative action compensates, we believe, for lack of presidential approval of the guidelines.

We also believe that the requirement of presidential approval was to assure a measure of uniformity in the rules and regulations issued by the various agencies, and that this legisltaive purpose is not in any way frustrated by not issuing the guidelines as §602

regulations. At the outset of the debate in the Senate on the bill, a letter from Attorney General Kennedy responding to certain questions from Senator Cooper was read into the record. See 110 Cong. Rec. 11941. The question was:

> How is it intended that a consistent set of regulations prohibiting discrimination in Federal financial assistance programs shall be established throughout all departments and agencies? What procedure is provided by title VI to secure consistent regulations pursuant to, and the uniform application of, title VI in each and every Federal financial assistance program?

The Attorney General responded:

> Section 602 provides that each agency's rules and regulations must be approved by the President. The validity of such rules and regulations will be subject to judicial consideration in any judicial review proceeding. Any cutoff of funds must be reported to the appropriate congressional committees.

See 110 Cong. Rec. 13699 (Senator Cooper's response). Similarly, when Senator Thurmond's amendment to substitute the requirement of congressional approval for that of presidential approval was defeated, Senator Miller read into the Record a letter from Deputy Attorney General Katzenbach, commenting on Senator Miller's suggestion

that a phrase requiring uniformity in the rules and regulations be included in §602. That letter said (110 Cong. Rec. 13938):

> This is in response to your request for comment on a suggestion that has been made for amending the provision in section 602 of H.R. 7152 which requires Presidential approval of the regulations to be issued by Federal agencies pursuant to that section. The suggestion is that language be added directing the President to make certain that the regulations issued by the agencies not be inconsistent with each other.
>
> Complete uniformity in agency regulations is impossible because of the diversity in the programs and factual situations covered by title VI, and in the statutes under which those programs are administered. It is, of course, desirable that the regulations be drafted so that there will be no inconsistency in similar factual situations involving similar statutory provisions. Significant disparities in common procedures, or in the rules of agencies with similar programs, would be unjustified and, if they occurred, would undoubtedly lead to difficulties in the enforcement of title VI.
>
> These considerations, as I understand it, were among the principal ones which motivated the House in writing and adopting the provisions for Presidential approval in section 602. It was intended that once White House scrutiny and approval of agency rules was required, inconsistencies of the kind referred to would be discovered and eliminated.
>
> In view of the foregoing, I do not believe that the suggested amendment is necessary.

We believe that the congressional purpose to promote uniformity was satisfied in the promulgation of the regulation under §602, which was approved by the President. That regulation established an administrative framework in the Department of Health, Education and Welfare basically similar to those established in all the other federal agencies with responsibility under Title VI. See e.g., 7 CFR, Part 15 (Department of Agriculture); 15 CFR, Part 8 (Department of Commerce); 32 CFR, Part 300 (Department of Defense); 43 CFR, Part 17 (Department of the Interior); 29 CFR, Part 31 (Department of Labor); and 22 CFR, Part 141 (Department of State). The President, who Congress looked to for obtaining uniformity among the federal agencies, approved a regulation for the Department of Health, Education and Welfare which uniquely gave the Commissioner of Education the power to determine the adequacy of desegregation plans for elementary and secondary schools, and which did not seek to circumscribe the Commissioner's judgment as to the specific content of these plans. Implicit in this administrative arrangement is a recognition that the desegregation of elementary

and secondary schools may require time, flexibility, and professional expertise, and a judgment that entrusting the Commissioner with this responsibility and power would not be disruptive of the uniformity within the executive branch that Congress desired. This judgment has been proved correct by experience. If the existence and exercise of this power by the Commissioner to determine the adequacy of the desegregation plans is not disruptive of the uniformity Congress entrusted the President to obtain, certainly the guidelines, a statement of the enforcement policies of the Commissioner, would be no more disruptive of that uniformity.

II. THE GUIDELINES MAY REQUIRE FACULTY DESEGREGATION

None of the standards of the 1966 Guidelines require school boards to take action not positively required by the Fourteenth Amendment and therefore by section 601 of the Civil Rights Act of 1964, or which could not properly be required of them by a court implementing the equal protection clause. It is plain, for example, that teacher desegregation is an integral part of any desegregation plan, not because teachers have employment rights vis-a-vis the school board, but because students are entitled to a non-racial education, and assignment of teachers to students on the basis of race denies them that right. See Bradley v. School Board of Richmond, 382 U.S. 103 (1965); Rogers v. Paul, 382 U.S. 198 (1965); Davis v. Board of School Commissioners of Mobile County, 364 F. 2d 896 (C.A. 5, 1966); Singleton v. Jackson Municipal Separate School District, 355 F. 2d 865 (C.A. 5, 1966); Wheeler v. Durham City Board of Education, 363 F. 2d 738 (C.A. 4, 1966); Kemp v. Beasley, 352 F. 2d 14 (C.A. 8, 1965). The recent decision Clark v. Board of Education of the Little Rock School District, _____ F. 2d ____ (C.A. 8, 1965) requires that specific and far-reaching steps must be

taken now to end faculty segregation. The Court said (slip opinion at 13):

> We agree that faculty segregation encourages pupil segregation and is detrimental to achieving a constitutionally required non-racially operated school system. It is clear that the Board may not continue to operate a segregated teaching staff. ... At this point the Board is going to have to take accelerated and positive action to end discriminatory practices in staff assignment and recruitment.

The defendants contend that §604 of the Act, which limits the application of Title VI with respect to employment practices, bars HEW from requiring faculty desegregation. Concedely, segregation of faculty is an employment practice vis-a-vis the teachers, but with respect to students it is an educational practice incompatible with a program of compliance with the equal protection clause and Title VI. See Rogers v. Paul, 382 U.S. 198, 200 (1965). Since §601 confers on students a right to a nondiscriminatory education in school systems receiving federal assistance, see Lemon v. Bossier Parish School Board, 240 F. Supp. 709 (W.D. La. 1965), the government's duty under §602 to enforce that right requires that it deal with all aspects of a school system involving discrimination that

bear upon the students. Moreover, it is naive to label faculty segregation as an employment practice and nothing more, when historically it has been one of the most obvious manifestations of a segregated system. That faculty segregation is, among other things, an employment practice is no warrant for bringing the practice within the immunity of §604.

There is compelling evidence that Congress did not intend that §604 would have the attribute of conflicting with the provisions of §601 or §602. Senator Humphrey, the principal administration spokesman for the Civil Rights Act of 1964, made the following reference to the Commissioner's responsibility regarding faculty desegregation [110 Cong. Rec. 6545 (1964]:

> It is not expected that funds would be cut off so long as reasonable steps were being taken in good faith to end unconstitutional segregation.
>
> In such cases, the Commissioner might also be justified in requiring elimination of racial discrimination in employment or assignment of teachers, at least where such discrimination affected the educational opportunities of children.

When the Senate leadership proposed a substitute bill which contained the present §604, Senator Humphrey stated that §604 "is in line with the provisions of §602 and serves to spell out more precisely the

declared scope of coverage of the title." 110 Cong. Rec. 12720.

There is no basis in the sparse legislative history of §604 for concluding that it was intended to change the particular meaning of §601 that had been elucidated by Senator Humphrey with respect to schools when Title VI first came before the Senate. Moreover, since the courts have now established that faculty desegregation is an essential element in the elimination of a dual system, a construction of Title VI which would inhibit administrative implementation of that requirement would render Title VI enforcement something less than a fully effective instrument for protection of the rights declared by §601. Congress surely did not intend that the Commissioner of Education should be forbidden from acting against a practice which the courts have ruled unlawfully discriminates against the primary beneficiaries of federal aid to education -- namely, the students.

III. THE GUIDELINES DO NOT VIOLATE §401(b) or §407(a) OF THE CIVIL RIGHTS ACT OF 1964.

Petitioners maintain that the guidelines are invalid because they violate sections 401(b)[9/] and 407(a)[10/] of the Civil Rights Act of 1964. We believe that this contention is based on a misunderstanding of both these statutory provisions and the guidelines.

Sections 401(b) or 407(a) do not purport to limit the authority of either the Executive or Judicial Branch to take action to correct segregation in the public schools that is prohibited by the Constitution. These sections were merely included

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9/ " 'Desegregation' means the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin, but 'desegregation' shall not mean the assignment of students to public schools in order to overcome racial imbalance." 42 U.S.C. 2000c(b).

10/ The pertinent portion of that section reads: "[N]othing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure compliance with constitutional standards." 42 U.S.C. 2000c-6(a).

to disclaim any intention to create a statutory source of authority to remedy "racial imbalance" in the public schools, which was viewed as a form of segregation not prohibited by the Constitution. As Senator Humphrey stated, the pertinent language in §407(a) was included "to preclude an inference that the title confers new authority to deal with 'racial imbalance' in schools. . . ." 110 Cong. Rec. 12714 (1964). The text of §407(a) clearly manifests this intention. It states that nothing contained therein shall empower the judiciary or executive officers from entering orders to achieve racial balance or shall "otherwise enlarge the existing power of the court to insure compliance with constitutional standards". With respect to the judiciary, it might even be doubtful whether Congress could properly limit the general equity powers of the federal courts in a manner to prevent them from ordering a school board to take such measures as may be necessary and proper to remedy segregation that is violating of the Constitution. Cf. Yakus v. United States, 321 U.S. 414, 460, 468 (dissenting opinion of Rutledge, J.); Estep v. United States, 327 U.S. 114, 125 (concurring opinion

of Murphy, J.), 132 (concurring opinion of Rutledge, J.). Nor do we believe that sections 401(b) and 407(a) limit the authority of the Attorney General to commence suits to eliminate constitutionally forbidden segregation in public schools or limit the authority of the Commissioner of Education to bring an end to constitutionally forbidden racial segregation in public schools that are federally assisted. While Congress has greater power to curtail the activities of these federal officials than it does to curtail the remedial powers of the federal courts, we find no indication in the legislative history that, in these sections, Congress sought to treat the Executive differently than it treated the Judiciary or that it intended to limit the great remedial purposes of the Civil Rights Act by limiting the authority of the Executive to take appropriate action in eliminating racial segregation that is prohibited by the Constitution. With respect to the Commissioner of Education, such segregation would be, by definition, a form of racial discrimination, which is prohibited by section 601 in all federally assisted activities and which the Commissioner

is authorized and directed to remedy in section 602. See also Simkins v. Moses H. Cone Memorial Hospital, 323 F.2d 959 (4th Cir. 1963).

Moreover, the guidelines impose no standards which would require, to borrow the language of section 401(b) of the Civil Rights Act, "the assignment of students to public schools in order to overcome racial imbalance". The term "racial imbalance" was viewed by Congress, as it is by the general public, as a synonym for "de facto segregation". As Congressman Cramer said in explaining the pertinent language in section 401(b):

> The purpose is to prevent any semblance of Congressional acceptance or approval of the concept "de facto segregation" or to include in the definition of desegregation any balancing of school attendance by moving students across school district lines to level off percentages where one race outweighs another. 110 Congressional Record 2280 (1964).

Congress was acting on the presumption that the Court of Appeals for the Seventh Circuit correctly stated the course of judicial decision in Bell v. School City of Gary, Indiana, 324 F.2d 209 (7 Cir., 1963) that a school board was under no constitutional duty to correct de facto segregation or racial imbalance. That Court held that if school attendance

zone lines are drawn without regard to race, but rather on the basis of such factors as density of population, travel distances, safety of the children, school operating costs, and convenience to parents and children, the zone lines are constitutionally valid even though there is a racial imbalance in the schools due to the residential patterns and the use of such criteria. The opinion of the Seventh Circuit was explicitly mentioned in the course of the congressional debate, and Senator Humphrey said by way of explaining section 407(a):

> The bill does not attempt to integrate the schools, but it does attempt to eliminate segregation in the school systems. The natural factors such as density of population, and the distance that students would have to travel are considered legitimate means to determine the validity of a school district, if the school districts are not gerrymandered, and in effect deliberately segregated. The fact that there is a racial imbalance per se is not something which is unconstitutional. That is why we have attempted to clarify it with the language of section 4. 110 Cong. Rec. 12717 (1964).

De jure segregation was distinguished from racial imbalance or de facto segregation and was understood to be segregation that is the result of a policy of the school board to separate the races in the public

schools, to have one set of schools for Negro students and Negro teachers and another set of schools for white students and white teachers. Brown v. Board of Education left no doubt as to the unconstitutionality of that type of segregation, and the guidelines are entirely concerned with correcting that type of segregation.

Petitioners claim that the guidelines go beyond correcting this type of unconstitutional segregation primarily because of the use of percentages of Negro transferees. They, however, misunderstand the significance of these percentages. HEW has settled upon stated percentage increases in the numbers of Negroes attending formerly all-white schools as a guide in selecting those free-choice plans which will be most carefully reviewed. 45 CFR §181.54. The percentage increases used as warning signals calling for closer observation of a plan in operation are predicated on very low initial transfers by Negroes; for example, transfers by 8 or 9 per cent of the Negroes in a system in 1965-66 is considered a "significant percentage of the students." Ibid. Thus, the function of the percentages is to identify those

systems in which legally required desegregation might not be taking place effectively. The percentages impose no compulsory transfer requirements. Their principal impact is to establish an internal procedure by which matters will be assigned for administrative review, and by announcing them, to thereby alert the school boards as to when they may expect close scrutiny. No action can be taken on the basis of the percentages; the statement declares, regarding the percentages, that "where there is substantial deviation from these expectations, and the Commissioner concludes, on the basis of the choices actually made and other available evidence, that the plan is not operating fairly, or is not effective to meet constitutional and statutory requirements, he will require the school system to take additional steps to further desegregation." Ibid.[11/]

11/ In the absence of a specific determination by the Commissioner based upon evidence peculiar to a given school system that its desegregation plan simply is not working, the percentages contained in the statement are given no administrative effect.

The Commissioner does not initiate administrative proceedings merely upon application of a statistical test based upon percentages of Negro transferees. But when a school district operating under a voluntary free-choice plan takes no steps to desegregate its faculty and an unexpectedly low number of Negro students have transferred to white schools, that combination of factors may induce the Commissioner to initiate administrative proceedings to determine whether there is substantial compliance with §601. Since both of these factors are judicially taken to be evidence of a constitutionally inadequate desegregation plan, Davis v. Board of School Commissioners of Mobile County, 364 F.2d 896 (C.A. 5, 1966), the Commissioner is justified in treating them as an appropriate basis for discharging his responsibility under Title VI.

Title VI: Southern Education Faces the Facts

Title VI of the 1964 Civil Rights Act provides that racial discrimination must be ended in all programs that receive federal financial assistance. Responsibility for administering this provision for most of the federal educational programs lies with the Office of Education of the Department of Health, Education, and Welfare. Requests for federal support for these programs for the 1965-66 school year are now being prepared in thousands of communities in both the North and the South. And in the process, the full import of the Civil Rights Act is becoming clear.

The South today is a society in agonizing transition. Ancient traditions and attitudes are slowly changing before the onslaught of contemporary events. For a decade or more since the 1954 and 1955 Supreme Court decisions outlawing segregation in the schools, the South has been moving with more deliberation than speed in bringing Negro and white together in the classroom. Slowly, but inexorably, however, efforts to avoid change have been swept away by the courts. The inevitability of full compliance with the Supreme Court's decision has become progressively clearer as one alternative after another has been attempted and has failed. Now Title VI opens another major act in the drama of school segregation. As one Florida news headline stated it, the issue for the seventeen Southern states that receive more than $350 million annually for elementary and secondary school programs is: "INTEGRATE—OR LOSE FEDERAL $$."

The issue appears clear—and, to the uninitiated, simple. Yet enforcement of Title VI is a complex matter. Its purpose is to build, not to destroy, to liberate, not to erect barriers. But harsh and unsympathetic enforcement of the letter of the law could be destructive. It could deny federal support to those children most desperately in need of it—and in the process exacerbate sectional feelings far beyond anything we have seen to date. Yet the law must be enforced.

Aware of the complex responsibility assigned to it, the Office of Education has moved with its own version of "all deliberate speed." To date it has been more notable for its caution than for its accomplishment in providing specific direction to school authorities faced with the necessities of radical change under Title VI.

There are, to be sure, good reasons for caution. An official statement of well-defined standards for desegregation would almost certainly be interpreted as an acceptable minimum, and few if any school districts would feel obliged to move beyond them. Nor is it reasonable to expect equal action from communities in Mississippi or Alabama and those in Kentucky or Tennessee. Yet it is difficult to justify unequal enforcement of the law. Meanwhile, Southern school authorities are not receiving the guidance they need in charting their course in unfamiliar waters.

The following memo is designed to provide specific guidelines to school authorities seeking to meet the terms of Title VI of the Civil Rights Act. It was prepared by C. W. Foster, Jr., professor of law at the University of Wisconsin and consultant to the Office of Education, who has long been deeply concerned with the problems of education. Mr. Foster's memo has no official status and does not bind the Office of Education in any fashion. Yet there is no doubt that it reflects directly the thinking of the officials charged with the responsibility for enforcement of Title VI as it applies to education.

SR hopes that Southern school authorities will find these guidelines helpful in making the fateful decisions that confront them. And Northern readers will find, in the calm words and careful analysis of the memo, a clear view of the issues as they have evolved to date.

THE ISSUE posed for Southern schools by Title VI of the 1964 Civil Rights Act is not *whether* they will desegregate. It is whether they will desegregate with—or without—continuing federal financial assistance. Even if federal aids are discontinued, segregated school districts still face the prospect of private litigation brought on behalf of Negro pupils in the community. And the Civil Rights Act increased the inevitability of desegregation by authorizing the Attorney General to bring suit in the name of the United States.

This memorandum is designed to furnish some guidelines to school authorities seeking compliance with Title VI. It stresses the points with which a desegregation plan must deal, illustrates ways in which particular procedures must be described, and suggests something of the range of choice open to a school district. What it cannot do is guarantee approval by the Commissioner of Education.

According to regulations promulgated by the Department of Health, Education and Welfare to implement the nondiscrimination policy of Title VI, school districts which seek to qualify for future federal aids must select among three courses of action:

1. "Form 441" Assurance of Compliance. This is an unqualified assurance that no discrimination whatever is practiced within the district. The 441 Assurance is largely inapplicable to districts in the seventeen states which in 1954 maintained legally separated Negro and white schools since in only a very few southern school districts have the last vestiges of the dual school system been eradicted. The Office of Education is returning for further information all 441 Assurances it receives from districts not fully desegregated and presumably a plan of desegregation rather than a 441 Assurance will be required in order to comply with requirements of Title VI.

2. Plan for the Desegregation of the School System. The regulations implementing Title VI will allow future approvals of federal aids for a district which submits to the Commissioner of Education a suitable plan for removing whatever discrimination remains in the school system. For the great bulk of the biracial school districts of the South the only effective way to continue receiving federal aids lies in submitting a plan of desegregation.

3. Court Order for Desegregation of the School System. The regulations also authorize continuation of aids to districts which are operating under a final order of a court of the United States for the desegregation of the school system. It is crucial to note that the order must be one directing desegregation of the school system; an order merely directing admission of a few named individuals, for example, without otherwise providing for desegregation of the system,

will not suffice. Despite more than a decade of litigation only a small fraction of the South's biracial districts were acting under court-ordered desegregation plans when the regulations implementing Title VI were promulgated.

The major issues facing desegregating school districts are highlighted below, together with some guidelines to the procedures that may be followed.

In general, it seems clear that no tersely stated or vaguely defined plan will be approved. What must be done in any plan is to spell out enough detail so that there can be general understanding of the situation and problems in the district, of the policies and procedures designed to deal with the problems, and of the district's intentions to carry out the plan in good faith.

On all these points the burden of persuasion is on local school authorities. Each school district's plan must sell itself.

I. Summary Statement of Present Racial Situation in District Schools

All plans for desegregation or final court orders submitted to the U.S. Office of Education for compliance with the Civil Rights Act of 1964 should be accompanied by a summary statement describing the racial picture in the district schools at the time the plan is submitted. As an alternative, the questionnaire on page 78 may be used, with the district adding to the questionnaire whatever further information it believes appropriate.

The reason for this demand is that rational appraisal of any desegregation plan is impossible without a general picture of the circumstances in the district when the plan is submitted. The questionnaire covers the minimum information needed to tell the story. But if the district intends to make use of geographic attendance zones or if busing is to be employed, maps and statistics which show the general racial characteristics of the proposed arrangement are essential.

Lest there be undue concern that too great a burden is imposed by having to supply this much information, it should be understood that precise, up-to-the-minute statistics are not required. The information needed is the kind that knowledgeable school authorities are aware of in general terms. It is enough that what is supplied is what fair-minded school officials believe to be true and what reasonable men would think necessary to know in order to judge a desegregation plan rationally.

II. Types of Desegregation Plans: General Characteristics

Most school desegregation plans evolved since 1954 are based either on geographic attendance zoning or freedom of choice. Some plans combine features of geography and choice and occasionally it has been suggested that pupils should be assigned to schools according to achievement or ability test scores. While in many districts pupils are separated according to achievement, ability or vocational interests for some purposes, no widespread use has been made of these characteristics as the basis of plans for desegregation, though presumably they would suffice if operated in good faith without discrimination based on race.

Because geographic zoning and freedom of choice provide the usual bases for desegregation plans this memorandum concentrates on the features of these two types.

A. Assignment by Geographic Zoning

Throughout the country geographic zoning is the common means for assignment of pupils to schools. In the dual systems of the South prior to 1954, separate (and often overlapping) geographic zones were widely used to assign Negro pupils to Negro schools and white pupils to white schools.

Since desegregation involves doing away with these separate Negro and white schools, the use of geographic zoning to accomplish this result requires the establishment of a unitary rather than dual system of attendance zones. Or put in the form of an example, all elementary schools of the district, whether formerly Negro or white, would have to be zoned on a single map without any overlapping of attendance zones.

Plans approved by courts in earlier years introduced unitary zoning on a grade-a-year or other stairstep basis. The questionable status of grade-a-year plans at present should give pause to any serious thought about using them, and any district must weigh carefully the factors discussed in Section VI of this memorandum as to any discriminatory practices preserved after fall 1965.

For many administrative purposes the relative simplicity of geographic zoning gives it evident advantages over assignment based on freedom of choice. It provides a relatively accurate way of forecasting future enrollments and is a direct method for shifting pupil populations to adjust for overcrowding.

Across the South the courts have uniformly held that assignment by attendance zones satisfies constitutional requirements for doing away with dual systems of schools, provided it is not used with the motive of producing racially invidious results. The fact that school authorities have the burden of explaining away circumstantial evidence of discrimination means that care should be taken to zone schools in ways which minimize instances in which suspicions of racial discrimination are likely to be aroused. And this is not an easy task.

The following examples illustrate situations likely to cause trouble: Oddly formed zones raise doubts, particularly where they coincide with racial boundaries between neighborhoods; indeed any zone lines coinciding with racial boundaries call for some explanation. Trouble comes also from creating optional attendance zones in racially mixed neighborhoods; certainly some special explanation is needed for any rule which permits out-of-zone attendance for residents of some but not all school zones.

Plans using geographic zoning should initially assign all pupils to the school in their zone of residence. Whatever transfer policies are available for attending outside the zone of residence should be open to Negroes and whites alike on the same terms and by the same means. The provision, sustained for a time in the courts, for permitting transfers to children who would be in a racial minority within their attendance zone school or classroom, has been struck down as a device to preserve segregation and will not do.

B. Assignment Based on Freedom of Choice

Desegregation plans based on freedom of choice are perhaps no more than transitional devices that ultimately will give way to unitary zoning. In theory, freedom of choice is unobjectionable. The practical difficulty is that the choice open may not in fact be free and school authorities who are considering freedom of choice plans have a special responsibility to assure themselves before adopting them that they can be carried out in good faith. Particularly is this true

(Continued on page 76)

Title VI—Nondiscrimination in Federally Assisted Programs

Section 601 of the Civil Rights Act of 1964 provides that: "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

Southern Schools

Continued from page 61

where ingrained community custom is likely to result in economic reprisals or threats to parents and children.

Recently, Federal courts have directed some districts to install unitary geographic zoning where it was shown that freedom-of-choice plans adopted earlier failed to affect the dual school pattern. But at present, plans based on freedom of choice appear sufficient to meet the requirements of Title VI, provided pupils are afforded a choice which is free and unfettered by past or present practices.

Thus a choice of schools is not free where a pupil is initially assigned to a school on the basis of race and then is provided only a limited right to transfer to another school. For this reason Pupil Assignment Laws, by themselves, do not constitute acceptable plans of desegregation.

Again, a choice is not free where administrative practices within the school system make the exercise of choice a burden by requiring parents either to go through the ordeal of complex forms or discomfiting interviews. It would also be an improper burden to require a pupil to register at a place reserved for his race even though he was subsequently permitted to enroll at a school of his choice; the answer here is that the pupil should be permitted to apply directly to the school he desires to attend.

Somewhat different problems are presented in handling transfers and re-assignments of children already enrolled in school. One reasonable way to handle the matter is to have the necessary forms and instructions distributed by the classroom teachers in the schools the pupils presently attend—provided that neither the teachers nor other school authorities attempt to influence or pressure anyone in the exercise of choices to be made.

School districts which attempt to combine freedom of choice with geographic zoning face special problems. Where freedom of choice furnishes the theoretical basis for assignment, every pupil in the district should be provided with a right to choose either a formerly white or formerly Negro school. If overcrowding results from the choices made, racial considerations cannot be employed to reject those who initially select the school threatened with overcrowding; geographic proximity to the school should then be employed in determining which choices to reject. Where such choices are thus rejected, further opportunity should be provided each parent and child to make another choice which can be carried out effectively. In other words, if freedom of choice is to be adopted, geographic zoning cannot be employed to prevent an effective choice of either a formerly white or formerly Negro school.

In light of the ease and convenience of administering geographic attendance zoning it may be realistic for many districts to employ a combination which gradually adds unitary zoning to a desegregation plan which initially relied principally on freedom of choice. For example, unitary geographic zoning could be employed for initial assignment and re-assignment commencing with the lower elementary grades, while a policy of freedom of choice is applied to the remaining grades of the system. Over a fairly short period of time the unitary system of zoning would be moved upward through the other grades, supplanting freedom of choice.

In short, freedom of choice plans are probably no more than a transitional device. Districts, in view of this, should give serious thought either to going directly to unitary systems of zoning or to introducing unitary zoning at lower grade levels from the beginning, expecting to move the unitary zoning upward to replace the freedom of choice policy first installed at higher grade levels.

III. Detailed Statement of Administrative Practices; Public Notice

Rational appraisal of a desegregation plan (or a court order for desegregation) is likewise impossible unless the plan itself sets forth enough detail to dispel doubts about the manner in which nondiscriminatory policies will be administered.

The written instructions to school districts furnished by the Department of Health, Education and Welfare make two points clear. First, there can be no discrimination practiced in desegregated grades as to questions of initial assignment, reassignment or transfer. Second, sufficient advance notice must be given so that parents can understand how the assignment and transfer rules work and can take advantage of them effectively.

It is a common reaction among school officials and other local authorities facing their first school desegregation that disaster will follow if public announcement is made of rules and procedures for making initial assignments and transfers. The answer to this is that the courts have consistently required clear and ample notice to be given—and the consequences have not been disastrous for communities that have made plain their intention to brook no disorder and to see to it that the rules are given firm and faithful implementation.

A frequent shortcoming of the desegregation plans initially forwarded to the Office of Education has been the failure to set out in any detail either the administrative specifics or the content, timing and manner of providing notice of assignment and transfer rights. Below, for illustrative purposes, are model forms of notice which set out the administrative details for handling four problems common to every system of schools. The models in question were designed for desegregation plans based on freedom of choice and would have to be adapted to fit the particular policy variations within any particular district. Too, the models would have to be altered to be made applicable to desegregation plans grounded on unitary geographic zoning.

The point to be stressed here is that every desegregation plan must deal specifically with providing notice of administrative details respecting initial assignment, reassignment and lateral transfer. Plans which fail to spell out the procedures and forms of notice for these four situations simply cannot be judged and thus no favorable action can be taken on them.

The following examples illustrate one way in which matters of notice, initial assignment, reassignment and transfer may be handled:

A. Pre-Registration of Pupils Planning to Enroll in Lowest Elementary Grades.

(1) Beginning ..... 1965 (a date at least four weeks before pre-registration is to commence) and once a week for three successive weeks the announcement below shall be conspicuously pub-

Federal Educational Expenditures

During fiscal year 1964, the federal government spent $351,410,000 for aid to elementary and secondary school programs in the seventeen Southern states. State-by-State expenditures are listed below. If the President's education program, now before Congress, is passed in substantially its present form, these amounts would be approximately doubled.

State	*Amount (in thousands)*
Alabama	$29,463
Arkansas	10,202
Delaware	2,671
Florida	27,187
Georgia	27,872
Kentucky	17,514
Louisiana	16,021
Maryland	24,668
Mississippi	12,548
Missouri	17,263
North Carolina	27,914
Oklahoma	17,098
South Carolina	15,802
Tennessee	19,290
Texas	44,241
Virginia	36,147
West Virginia	5,509

lished in two newspapers having general circulation in the district:

PRE-REGISTRATION OF KINDERGARTEN/FIRST GRADE PUPILS FOR FALL 1965

Pre-reg--tration of pupils planning to enroll in kindergarten/first grade (as appropriate for schools in the district) for the fall 1965 semester will take place for a period of days, from 1965 through 1965. Under policies adopted by the Board of Education, parents or guardians may register pupils during this period at the school of their choice. At the time of pre-registration a choice may be expressed for either the nearest formerly Negro school or the nearest formerly white school. In the event of overcrowding, preference will be given without regard to race to those choosing the school who reside closest to it. Those whose choices are rejected because of over-crowding will be notified and permitted to make an effective choice of a formerly Negro or formerly white school.

The choice is granted to the parent or guardian and the child. Teachers, principals and other school personnel are not permitted to advise, recommend or otherwise influence the decision. Nor will school personnel either favor or penalize children because of the choice made.

Children not pre-registered in spring may be registered at the school of their choice on , immediately prior to the opening of schools for the fall 1965 semester, but first preference in choice of schools will be given to those who pre-register in the spring period.

(2) Annually after 1965, similar practices will be followed with respect to registering and enrolling pupils for the first time in the lowest elementary grades.

B. All Other Pupils Newly Enrolling in District Schools.

The Office of the Superintendent will furnish at such times as are appropriate to the parents or guardians of all other pupils newly enrolling in the schools of the district the forms and instructions necessary to complete registration and enrollment at the school of their choice. These instructions for registration and enrollment of new pupils shall be in writing and shall set forth in detail the Board of Education policies and procedures for registering and enrolling in the school of their choice (see form of published notice under Part A above).

C. Pupils Graduating From Elementary and Junior High Schools.

The initial assignment of pupils graduating either from elementary or junior high schools and planning to enroll for the first time in a school at the next higher level will be handled in the following manner:

All such pupils will be furnished by their classroom teachers on a date fixed by the Superintendent prior to their graduation the appropriate instructions and forms on which their parents or guardians may exercise their choice of the school next to be attended by the pupils. A reasonable time will be provided for returning the form after it has been distributed and the written instructions accompanying the form shall set forth in detail the Board of Education policies permitting a free choice of the school next to be attended (see form of published notice under Part A above). Where no choice is exercised by the parents or guardians within the time fixed, the pupil will be assigned without regard to race to the next higher school, and the instructions furnished parents and guardians shall so state.

D. Lateral Transfers by Pupils Eligible to Continue in a School Where Currently Enrolled.

Prior to the end of classes for each school year pupils eligible to continue in the same school will be assigned for the forthcoming year. At a date fixed by the Superintendent and appropriately in advance of the time that reassignment for the forthcoming year is made, all pupils will be furnished by their classroom teachers with appropriate forms and instructions for use by their parents in exercising their right to apply for a transfer of their child to a school of their choice for the forthcoming year. Such instructions will set forth in detail the Board of Education policies respecting transfers without regard to race for the forthcoming year (see form of published notice under Part A above) and will state that each child will be reassigned to the school currently attended in the event the right of lateral transfer is not exercised within the time fixed in the instructions. The instructions may also provide for lateral transfer at other times of the year under special circumstances as may be fixed by the Superintendent under the Board's direction.

IV. Buses and Bus Routes

Districts which provide busing must make special provision in their plans to make clear that discriminatory practices are removed. In dual school systems it has been customary in many instances for separate buses to travel the same roads, one to pick up Negroes for the Negro school and the other to take whites to a different school. Again, separate bus routes for Negro and white schools have operated in some instances to place individual children of either or both races under the burden of going to a distant pick-up point for their own race when a pick-up point for the opposite race was much more convenient.

Such policies and practices, supported with public funds, result in manifest racial discrimination and if continued can seriously impair the right freely to choose a school without regard to race. Desegregation plans must accordingly spell out in detail the present racial character of busing practices, indicate the steps which will be taken to create unitary systems of busing available to all pupils without regard to race, and describe the manner in which parents or guardians and pupils will be given notice of the right to ride buses without regard to race.

V. Teacher and Staff Desegregation

Desegregation of teachers and professional staffs is ultimately in the picture. It was characteristic of the legally separated schools that Negro teachers were assigned to Negro schools, white teachers to white schools. In general the courts have permitted desegregation of pupils to take precedence over desegregation of teachers and staff personnel in the schools. More recently, however, courts have been ordering districts to undertake teacher integration as part of the total job of desegregating.

As the court cases deal with the problem, pupils have been permitted to challenge faculty segregation on several grounds. First, pupils cannot be discriminated against on the basis of their race and hence pupils have a right to insist that a teacher not be assigned them on the basis that the teacher's race corresponds to their own. Second, it has been objected that the existence of all Negro and all white faculties restrains freedom of choice, given traditional community patterns. Finally, it is objected that segregated faculties and teaching staffs are evident vestiges of the dual schools and that a district cannot be said to have a unitary character until patterns of teaching and staff segregation are broken up.

The problem is one which every district must face and start working on. Every desegregation plan should reveal awareness of the problem and provide assurance that steps will be taken to remove racial discrimination in assignment of teaching personnel.

VI. Rate of Desegregation: How Many Grades to Desegregate?

It is difficult to advise with certainty concerning the rate at which desegregation must be completed. For one thing, the courts have ordered a speeding up in districts which first began at slow year-to-year paces. At the same time, courts have allowed some districts to break the ice by starting with a shorter step toward full desegregation the first year than will be required of them thereafter.

Whatever the date of completion, any plan of desegregation must sketch

Compliance Information: Nondiscrimination in Federally Assisted Programs---

This outline is furnished as an aid in reporting information generally helpful in appraising the sufficiency of plans for desegregation of school districts which seek compliance with the nondiscriminatory policy of Title VI of the Civil Rights Act of 1964. Precise, up-to-the-minute statistics are not required. The information sought is the kind that knowledgeable school authorities are aware of in general terms and approximations will suffice where exact detail is not easily available.

I. Racial Characteristics of School Population

A. By race, what are the approximate school-age populations residing within the geographic boundaries of the school district (including residents who attend public schools outside the district or private school within or without the district)? White_____; Negro_____; Other_____.

B. How many Negroes presently attend predominantly white schools?_____.

C. How many whites presently attend predominantly Negro schools?_____.

D. By grade level, approximately how many Negro pupils presently attend classes with whites in the public schools of the district (strike out grades not actually taught in district schools)? Kindergarten_____; 1st grade_____; 2nd_____; 3rd_____; 4th_____; 5th_____; 6th_____; 7th_____; 8th_____; 9th_____; 10th_____; 11th_____; 12th_____.

E. How many pupils attend public schools outside the district on a tuition-paid basis? White_____; Negro_____; Other_____.

F. How many pupils residing in the district presently attend private schools on a tuition-grant basis? White_____; Negro_____; other_____.

G. Where separate treatment is accorded any other non-white groups besides Negroes, please indicate the general situation on a separately attached sheet.

II. Racial Characteristics of District Schools

A. What is the number of elementary schools (grades _____ through _____) in which the pupils enrolled are: all white_____; all Negro_____; integrated_____; other (describe on a separate sheet)?

B. What is the number of junior high schools (grades _____ through _____) in which the pupils enrolled are: all white _____; all Negro_____; integrated_____; other (describe on a separate sheet)?

C. What is the number of high schools (grades _____ through _____) in which the pupils enrolled are: all white_____; all Negro_____; integrated _____; other (describe on a separately attached sheet)?

D. Briefly describe on a separately attached sheet the general racial characteristics of the pupil populations in any special schools operated by the distirct which are not accounted for in the categories set out above.

III. Racial Characteristics of Teaching and Administrative Staffs

A. By race, what is the approximate number of teachers in the district who are: white_____; Negro_____; other_____?

B. By race, what is the approximate number of non-teaching staff members who are: white_____; Negro_____; other_____?

C. How many elementary schools have teaching staffs which are: all white _____; all Negro_____; integrated_____; other (describe separately)?

D. How many junior high schools have teaching staffs which are: all white _____; all Negro_____; integrated_____; other (describe separately)?

E. How many high schools have teaching staffs which are: all white_____; all Negro_____; integrated_____; other (describe separately)?

IV. Maps

Maps, which need not be of professional quality, can be separately furnished where useful or perhaps necessary to demonstrate such things as school location, bus routes. Supply these separately where this is thought desirable to demonstrate particular characteristics of a desegregation plan.

V. School Bus Routes and Practices

Where school buses are supplied for some or all pupils, describe in a general way on a separate sheet the effect which the routes and stops made by the buses have on the racial characteristics of the district's schools.

Date_____ Name of District_____

_____

out the steps needed to finish the job. For the purpose of securing funds for the coming year, however, the steps to be taken in the fall of 1965 are, perhaps, the most critical single part of the overall plan. The HEW regulations make it clear that any plan accepted may be reviewed in later years.

Some general guidelines may be helpful, however:

Neither Title VI nor the regulations adopt court rulings as the standard to be followed by the Commissioner of Education. But under the regulations the Commissioner must accept court ordered plans of desegregation and it would appear unlikely that he will accept less than required by judicial standards in passing on voluntary plans.

The U.S. Courts of Appeal have played a major role in rationalizing the differences among lower court reactions to desegregation plans. In the absence of a more precise indication for the Office of Education, the rulings of the Courts of Appeal probably furnish the best approximate guides at hand. But in looking to court decisions several things must be borne constantly in mind. First, what the courts ordered for fall 1964 is not likely to be the same they will order for fall 1965; there has been a marked judicial trend toward accepting less delay as the years pass. Second, since the Commissioner of Education is free to reach an independent judgment, he is certainly not bound to follow lower court rulings which call for the most minimal amounts of desegregation.

Last year, for the opening of schools in 1964, the Court of Appeals for the Fifth Circuit laid down a general formula for newly desegregating districts which suggested (a) that desegregation had to take place both from the bottom up and the top down simultaneously and (b) that a total of four desegregated grades for fall 1964 was expected. In the Fourth Circuit on the other hand some Federal courts have insisted upon applying a freedom of choice program throughout every grade level in the first year of desegregation.

It can be said with certainty that no plan will be approved which works exclusively from the top down. It will be essential for approval that there be in all instances desegregation which begins without restriction in the lowest grade levels of the school system. To avoid misunderstanding, any district which has a desegregation program which works from the first grade up must either apply the policy to pre-school clinics and kindergartens or state that classes at these levels are not held.

Each district must carry the burden of justifying any delay beyond fall 1965 in completing its desegregation plan. This is true of districts which have already experienced some desegregation.

It is also true for districts which have yet to take the first step.

Clearly, the surest course is to make the desegregation program available generally to all grades for fall 1965. If less than this is done, desegregation should be installed both from the bottom of the system upward and from the top down. The real question for any district is the extent to which it wishes to risk disapproval of its plan.

VII. Consultants and Technical Assistance

Other provisions of the Civil Rights Act of 1964 make available funds to assist school districts in designing and carrying out plans of desegregation. The U.S. Office of Education currently retains a group of legal consultants who can be called on by school districts who request such assistance. State Departments of Education, in complying with Title VI, agree to provide advice and assistance to local school authorities in working out desegregation problems and the State Departments may arrange ways for providing further guidance through the use of consultants and others. Questions concerning such help should be addressed to the State Departments of Education or to the U.S. Office of Education.

—G. W. Foster, Jr.
Professor of Law,
University of Wisconsin
and Consultant to
U.S. Office of Education.

Attachment B

PROVISIONS CONTAINED IN THE PROPOSED DECREE OF DECEMBER 29, 1966 ARE SUPPORTED BY OTHER JUDICIAL DECISIONS AND PARALLEL THE HEW GUIDELINES

The provisions of the proposed decree parallel the provisions for an acceptable freedom of choice plan under HEW's "Revised Statement of Policies for School Desegregation Plans under Title VI of the Civil Rights Act of 1964" (HEW Guidelines). 1/ This attachment compares the proposed decree, the HEW Guidelines and court-ordered provisions.

I

SPEED OF DESEGREGATION

The proposed decree would order desegregation of all grades for the 1967-68 school year. This reflects the already-established rule in this Circuit. (Davis v.

1/ References in this Attachment B are to the 1966 HEW Guidelines, which are substantially the same as the 1967 Revision.

Board of School Commissioners of Mobile County, 364 F.2d 896 (C.A. 5, 1966).

Recent district court orders have similarly required desegregation of all grades by the beginning of the 1967-68 school year. See e.g., Carr v. Montgomery County Board of Education, 253 F. Supp. 306 (M.D. Ala., 1966); Harris v. Bullock County Board of Education, 253 F. Supp. 276 (M.D. Ala., 1966); United States v. Amite County School District, Civil No. 3983, S.D. Miss., August 17, 1966; McFerren, Jr. v. County Board of Education of Fayette County, Civil No. C-65-136, W.D. Tenn., June 21, 1966.

II

EXERCISE OF CHOICE

This part of the proposed decree sets forth the mechanics of operation of the freedom of choice plan, and closely follows the standards in the HEW Guidelines.

(a) Who may exercise choice.

A parent will exercise the choice, except that a child who has reached the ninth grade or the age of fifteen may exercise his own choice. This closely follows

the language of §181.42 of the HEW Guidelines and similar language has appeared in court orders in Harris v. Crenshaw County Board of Education, Civil No. 2455-N, M.D. Ala., Sept. 23, 1966; United States v. South Pike Consolidated School District, Civil No. 3984, S.D. Miss., Aug. 17, 1966; Robinson v. Shelby County Board of Education, Civil No. 4916, W.D. Tenn., May 20, 1966, as amended, Jan. 19, 1967.

(b) Annual Exercise of Choice.

In stating that all students "shall be required to exercise a free choice of schools annually," the proposed decree follows the requirement of §181.43 of the HEW Guidelines. Affording an annual choice has been required in Singleton v. Jackson Municipal Separate School District, 355 F.2d 865, 871 (5th Cir., 1966); Kemp v. Beasley, 352 F.2d 14 (8th Cir., 1965); Carr v. Montgomery County Board of Education, supra; Lee v. Macon County Board of Education, Civil No. 604-E, M.D. Ala., Mar. 11, 1966; Harris v. Bullock County Board of Education, supra; United States v. Lowndes County Board of Education, Civil Action No. 2328-N (M.D. Ala., Feb. 10, 1966); Adams v. Mathews, (Longview Independent School District, Texas) Civil Action No. 3095 (E.D. Tex., 1965);

Turner v. County School Board of Goochland County, Va., 252 F. Supp. 578 (E.D. Va., 1966) as amended, Civil No. 4343, May 4, 1966; Bell v. School Board of the City of Staunton, Va., No. 65-C-H, W.D. Va., Jan. 5, 1966; United States v. North Pike Consolidated School District, Civil No. 3807, S.D. Miss., Sept. 25, 1965, as amended, Aug. 30, 1966; United States v. Natchez Special Municipal Separate School District, Civil No. 1120(W), S.D. Miss., Jan. 28, 1966 as amended Apr. 15, 1966; Barnhardt v. Meridian Separate School District, Civil No. 1300(E), S.D. Miss., Aug. 5, 1965; United States v. Aberdeen Municipal Separate School District, Civil No. EC 6594, N.D. Miss., Sept. 10, 1965; Anderson v. Canton Municipal Separate School District, Civil No. JC 3700, S.D. Miss., Aug. 5, 1965 and Aug. 31, 1965. The requirement that a choice must be exercised by each student was included in Carr v. Montgomery County Board of Education, supra; Beckett v. School Board of the City of Norfolk, Va., Civil No. 2214, E.D. Va., consent decree, Mar. 17, 1966; Harris v. Bullock County Board of Education, supra; United States v. Lowndes County Board of Education, supra.

(c) Choice Period.

The choice period in the proposed decree is for thirty days, and commencing the 1967-68 school year is set from March 1 to March 31. The proposed decree also provides that there will be no preference given to any choice because of when it was exercised within the choice period. These provisions follow the HEW Guidelines (§181.44), which require a thirty-day choice period that is to end no later than April 30 each year, and which also require that no preference be given to choices exercised within the period. Similar provisions are embodied in the following court orders: Carr v. Montgomery County Board of Education, supra; Harris v. Bullock County Board of Education, supra; Lee v. Macon County Board of Education, supra; United States v. Lowndes County Board of Education, supra; Kier v. County School Board of Augusta County, Va., 249 F. Supp. 239 (W.D. Va., 1966).

(d) Mandatory Exercise of Choice.

The provisions of the proposed decree respecting failure to exercise a choice within the choice period and the late choices resemble §181.43 and §181.45 of the Guidelines. See also Kemp v. Beasley, supra at 22,

Jenkins v. City of Bogalusa School Board, Civil No. 15798, E.D. La., Supplemental order, Aug. 15, 1966.

(e) Public Notice.

The provisions of the proposed decree respecting notice except for that relating to posting, are similar to the requirements for voluntary plans under §181.53 of the Guidelines. Similarly the Courts have required adequate public notice under freedom of choice plans. Stell v. Savannah-Catham County Board of Education, 333 F.2d 55 (5th Cir., 1964), cert. den., sub nom. Roberts v. Stell, 379 U.S. 933; Carr v. Montgomery County Board of Education, supra at 309; United States v. Amite County School District, supra; Thompson v. County Board of Education of Hanover County, Va., Civ. No. 4274; E.D. Va., Jan. 27, 1966; Adams v. Mathews, supra; Baird v. Benton County Board of Education, Civil No. WC 6513, N.D. Miss., Aug. 3, 1965.

(f)-(j) Mailing of Explanatory Letters and Choice Forms; Extra Copies of the Explanatory Letter and Choice Form; Content of Choice Form; Return of Choice Form; Choices Not in Official Form.

Paragraphs (f) through (j) of Part II the proposed decree are basically those appearing in §181.46 of the HEW Guidelines. For judicial acceptance of these

requirements in court orders, see Carr v. Montgomery County Board of Education, supra, (an explanatory notice and a choice form); Harris v. Bullock County Board of Education, supra (same); United States v. Aberdeen Municipal Separate School, Civil No. EC 6594, N.D. Miss., Sept. 10, 1965, as amended, August 26, 1966, Sept. 2, 1966 (same, also, provisions for extra copies of the letter and form, return of form, and choices not made on the official form); United States v. North Tippah Consolidated School District, Civil No. WC 6641, N.D. Miss., Sept. 20, 1966 (same as Aberdeen).

(k) Choice Forms Binding.

The proposed decree and the Guidelines (§181.48) both require that a choice, once submitted, is binding for the school year. For similar provisions in court orders see Carr v. Montgomery County Board of Education, supra; Beckett v. School Board of the City of Norfolk, supra; United States v. North Tippah Consolidated School District, supra.

(l) Preference in Assignment.

Part II(l) of the proposed decree requires that each choice must be honored unless it would result

in overcrowding, and provides for a non-discriminatory order of preference and assignment if overcrowding would result. For similar requirements see Stell v. Savannah-Chatham County Board of Education, supra at 65; United States v. Plaquemines Parish School Board, Civil No. 66-71A, E.D. La., order of Aug. 26, 1966; United States v. St. Bernard Parish School Board, Civil No. 16323, E.D. La., order of Aug. 30, 1966; Lockett v. Board of Education of Muscogee County School District, Ga., 342 F. 2d 225 (5th Cir. 1965). See also §§ 181.49 and 181.51 of the HEW Guidelines.

(m) Second Choice Where First Choice is Denied.

Part II(m) of the proposed decree requires the offer of choice within seven days after the student receives a notice informing him that his first choice has been denied. For cases similarly allowing a second choice where the first choice is denied, see Carr v. Montgomery County Board of Education, supra; Beckett v. School Board of the City of Norfolk, Va., supra; Anderson v. Canton Municipal Separate School District, supra; United States v. North Pike Consolidated School District, supra; Baird v. Benton County Board of Education, supra; United States v. Natchez Special

Municipal Separate School District, supra; United States v. Carroll County Board of Education, Civil No. GC 6541, N.D. Miss., Sept. 3, 1965, as amended, Jan. 20, 1966; Cowan v. Bolivar County Board of Education, Civil No. 6531, N.D. Miss., Aug. 27, 1965. See also HEW Guidelines, §181.49, a small portion of the language of which is embodied in the proposed decree.

(n) Transportation.

The transportation provision of the proposed decree resembles, in abbreviated form, the language of §181.51 of the Guidelines. Among court orders that include transportation provisions is Harris v. Bullock County Board of Education, supra at 277-278, in which it was ordered that:

> [E]very student choosing the school nearest his residence will be transported to the school to which he is assigned, whether or not it is his first choice, if that school is sufficiently distant from his home to make him eligible for transportation.

See also in United States v. Sunflower County School District, Civil No. GD 6637A, N.D. Miss., Sept. 2, 1966; United States v. Wilkinson County School District, Civil No. 1160, S.D. Miss., Sept. 8, 1966; United States

v. Aberdeen Municipal Separate School District, supra.

In United States v. Amite County School District, supra, the court order provided that:

> Transportation will be provided on an equal basis without segregation or other discrimination. . . . The right to attend any school in the system will not be denied because of lack of school system transportation from the pupil's home to the school chosen. . . . In any event, every student eligible for busing shall be transported to the school to which he is assigned under the provision of this plan if his first choice is either of the two schools nearest his residence.

(o)-(p) Officials Not to Influence Choice; Protection of Persons Exercising Choice.

The requirement of the proposed decree forbidding any official, teacher or employee from influencing a parent or student in the exercise of choice is based on §181.52 of the Guidelines.

Similar language was used by the courts in United States v. Lowndes County Board of Education, supra; United States v. South Pike Consolidated School District, supra. The added provision in the proposed decree for the protection of persons exercising their rights under the decree merely implements the basic requirement that the choice be truly free.

III

PROSPECTIVE STUDENTS

Part III of the proposed decree gives each prospective student the right to exercise a choice and to be informed of the plan as soon as the school system learns he plans to enroll.

See United States v. North Tippah Consolidated School District, supra; Carr v. Montgomery County Board of Education, supra; for orders which recognize the need to make special provision for students who are entering the school system for the first time. See also HEW Guidelines §181.47.

IV

TRANSFERS

This part of the proposed decree provides for the transfer of students under circumstances irregular to those provided for under §181.71 of the Guidelines and as required by Singleton v. Jackson Municipal Separate School District, supra, and Davis v. Board of Commissioners of Mobile County, supra.

For court orders with special provisions for flexibility in transfers to meet the special needs of students who are, for example, physically handicapped, or who require courses not offered at the assigned school, see United States v. North Pike Consolidated School District, supra; United States v. Natchez Special Municipal Separate School District, supra; Mason v. Biloxi Separate School District, Civil No. 2696, S.D. Miss., Aug. 5, 1965; United States v. Aberdeen Municipal Separate School District, supra; Cowan v. Bolivar County Board of Education, supra; United States v. Carroll County Board of Education, supra; United States v. North Tippah Consolidated School District, supra.

V

SERVICES, FACILITIES, ACTIVITIES AND PROGRAMS

This part parallels §181.14 of the Guidelines. Similar provisions appear in the orders in Carr v. Montgomery County Board of Education, supra, and in Beckett v. School Board of the City of Norfolk, Va., supra.

VI

SCHOOL EQUALIZATION

The provisions requiring improvement in schools which before the order were Negro schools parallel §181.15 of the Guidelines. Such provisions were included in the orders in Carr v. Montgomery County Board of Education, supra; Harris v. Bullock County Board of Education, supra; Lee v. Macon County Board of Education, supra; United States v. Lowndes County Board of Education, supra; and United States v. North Tippah Consolidated School District, supra. A requirement for remedial programs similar to that in the proposed decree was also included in the cases just cited.

VII

NEW CONSTRUCTION

The provision in the proposed decree relating to new construction is in part found in the order of the District Court in Carr v. Montgomery County Board of Education, supra, which required that, in addition to the closing of certain schools, "expansion of existing school plants to accommodate displaced students will be

designed to eliminate the dual school system." For court recognition of the possible discriminatory effects of construction programs, see Board of Public Instruction of Duval Co., Fla. v. Braxton, 326 F.2d 616, 617 n. 1 (5 Cir. 1964); Wheeler v. City of Durham Board of Education, 309 F. 2d 630 (5th Cir., 1962); Gilliam v. School Board of The City of Hopewell, Va., 345 F.2d 325, 329 (concurring opinion).

VIII

FACULTY AND STAFF

The necessity of requiring school boards to desegregate faculties is recognized in §181.13 of the Guidelines, and in such opinions as Chambers v. Henderson Milk City Board of Education, 364 F.2d 189 (4th Cir., 1966); Smith v. Board of Education of Morrilton, 365 F.2d 770, 778 (8th Cir. 1966); Clark v. Board of Education of Little Rock School District, No. 18-368, 8th Cir. December 15, 1966; Brown v. County School Board of Frederick County, 245 F. Supp 549, 560 (W.D. Va., 1965); Board of Education of Oklahoma City Public Schools v. Dowell, No. 8523, 10th Cir., Jan. 23, 1967, affirming 244 F. Supp. 971, 977-978 (W.D. Okla.

1965); See also the orders entered in United States v. Aberdeen Municipal Separate School District, supra; United States v. Iuka Special Municipal Separate School District, Civil No. E C 6673, N.D. Miss., Sept. 21, 1966; United States v. North Tippah Consolidated School District, supra; United States v. Greenwood Municipal Separate School District, No. GS 6640, N.D. Miss., Sept. 2, 1966; United States v. Leflore County School District, Civil No. GC 6640A, N.D. Miss., Sept. 2, 1966; United States v. Sunflower County School District, supra; United States v. Humphreys County School District, Civil No. GC 6645, N.D. Miss., Sept. 2, 1966; United States v. Calhoun County School District, Civil No. WC 6637, W.D. Miss., Aug. 26, 1966; United States v. Carroll County School District, supra; Robinson v. Shelby County Board of Education, Civil No. 4916, W.D. Tenn., Consent Decree, Jan. 19, 1967; Harris v. Crenshaw County Board of Education, supra; Franklin v. Barbour County Board of Education, M.D. Ala., Civil No. 2458-N, M.D. Ala., Sept. 22, 1966; United States v. Lowndes County Board of Education, supra; Lee v. Macon County Board of

Education, Civil No. 604-E, M.D. Ala., Mar. 11, 1966; Carr v. Montgomery County Board of Education, supra; United States v. Crawfordsville School District No. 2, Civil No. J-66-C-38, E.D. Ark., Sept. 16, 1966; McGhee v. The Nashville Special School District No. 1, W.D. Ark., Civil No. 962, March 3, 1966; Jenkins v. City of Bogalusa School Board, supra; United States v. Plaquemines Parish School Board, supra; United States v. St. Bernard School Board, supra; United States v. Amite County School District, supra; Anderson v. Canton Municipal Separate School District, supra; United States v. North Pike County School District, supra; United States v. South Pike County, supra. These orders seek to eliminate school policies which make invidious distinctions on the basis of race and this includes the maintenance of segregated professional staffs. Relying on Bradley v. School Board of City of Richmond, 383 U.S. 103 (1965) and Rogers v. Paul, 382 U.S. 198 (1965), this Court in Singleton v. Jackson Municipal Separate School District, 355 F.2d at 870, ruled that it was "essential" that the plan of desegregation for Jackson, Mississippi "provide an adequate start toward elimination of race as a basis for the employment and

allocation of teachers, administrators, and other personnel." Similarly, this Court ruled that the plan of desegregation for Mobile, Alabama "must be modified in order that there be an end to the present policy of hiring and assigning teachers according to race by the time the last of the schools are fully desegregated for the school year 1967-68." Davis v. Board of School Commissioners of Mobile County, 364 F.2d 896 at 904. See also Davis v. Board of School Commissioners of Mobile County, Civil No. 22,759, S.D. Ala., Aug. 16, 1966.

IX

REPORTS TO THE COURT

The reports required by the proposed decree are not dissimilar from those required by the Commissioner of Education under Section 181.55 of the Guidelines. Reporting provisions were included in the court orders in United States v. Iuka Special Municipal School District, supra; United States v. North Tippah Consolidated School District, supra; United States v. Aberdeen Municipal Separate School District, supra; Beckett v. School Board

of the City of Norfolk, Va., supra; Carr v. Montgomery County Board of Education, supra; Harris v. Bullock County Board of Education, supra; Lee v. Macon County Board of Education, supra.

ATTACHMENT C

PROCEDURAL HISTORIES OF THE SEVEN
CASES NOW BEFORE THE COURT

BROWN v. BOARD OF EDUCATION OF CITY OF BESSEMER
(Northern District of Alabama)

DC	May 24, 1965	Complaint filed.
DC	June 16, 1965	Plaintiffs' motion for a preliminary injunction filed.
DC	June 21, 1965	United States' motion to intervene granted.
DC	June 30, 1965	Hearing on plaintiffs' motion for a preliminary injuction.
DC	June 30, 1965	Board ordered to submit a desegregation plan.
DC	July 9, 1965	Desegregation plan submitted by the Board.
DC	July 15, 1965	Plaintiffs filed objections to Board's plan.
DC	July 19, 1965	The United States filed objections to Board's plan.
DC	July 29, 1965	Hearing on objections to plan.
DC	July 30, 1965	Order entered approving plan.
DC	August 5, 1965	Notice of appeal filed by the United States.
CCA	August 6, 1965	Motion for an injunction pending appeal, or in the alternative, for expedited hearing filed by the United States.
DC	August 9, 1965	Notice of Appeal filed by plaintiffs.

CCA	August 17, 1965	Order vacating and remanding the case to the district court for further consideration in light of Singleton v. Jackson Municipal Separate School District, 348 F. 2d 729 (C. A. 5, 1965) and Price v. Denison Independent School District, 348 F. 2d 1010 (C. A. 5, 1965).
DC	August 20, 1965	Motion filed by the United States for an order in conformity with the mandate of the Court of Appeals.
DC	August 27, 1965	Amendment to desegregation plan filed by the Board.
DC	August 27, 1965	Ordered entered by the District Court overruling objections of plaintiffs and the United States to the amended desegregation plan.
DC	October 25, 1965	Notice of appeal filed by the United States.
DC	November 23, 1965	Order extending the time in which to file and docket the record with the Court of Appeals.
CCA	January 20, 1966	Record filed and docketed in the Court of Appeals.
CCA	March 18, 1966	Printed record filed in the Court of Appeals.
CCA	April 4, 1966	Motion filed by the United States to consolidate this appeal with six other appeals and to expedite.
CCA	April 7, 1966	Order granting the Motion of the United States to expedite the appeal and setting the case for hearing during the week of May 23, 1966.

BOYKINS v. FAIRFIELD BOARD OF EDUCATION
(Northern District of Alabama)

DC	July 21, 1965	Complaint filed.
DC	July 21, 1965	Plaintiffs' Motion for a preliminary injunction filed.
DC	July 30, 1965	United States intervened.
DC	August 16, 1965	Hearing on plaintiffs' motion for a preliminary injunction. Order entered to submit plan.
DC	August 18, 1965	Objections to the Board's desegregation plan filed by plaintiffs.
DC	August 19, 1965	Plan for desegregation filed by Board.
DC	August 19, 1965	Objections to the Board's desegregation plan filed by the United States.
DC	August 20, 1965	Hearing on objections to the plan.
DC	August 23, 1965	Amended plan for desegregation filed by the Board.
DC	August 23, 1965	Order entered approving amended plan.
DC	September 2, 1965	Plaintiffs moved to require the Superintendent to show cause why he should not accept applications for transfer from certain students.
DC	September 2, 1965	United States applies for order to show cause why order should not issue (a) enjoining the Board from applying more stringent procedures to Negro applicants for admission to formerly all-white schools than applied to white students already attending such schools and (b) ordering the Board to admit certain Negro applicants to formerly all-white schools.

DC	September 2, 1965	Order for Board to show cause entered by the District Court.
DC	September 7, 1965	Board enjoined from applying standards and criteria to Negro children seeking to transfer to white schools not required of white children.
DC	September 9, 1965	Hearing on plaintiffs' motion to require the Superintendent to accept applications for transfer of certain students.
DC	September 9, 1965	Order entered requiring the Superintendent to grant applications of four of seven Negro applicants.
DC	October 22, 1965	Notice of appeal filed by the United States.
DC	November 23, 1965	Order extending the time to file and docket the record in the Court of Appeals.
CCA	March 1, 1966	Printed record filed in the Court of Appeals.
CCA	April 4, 1966	Motion filed by the United States to consolidate this appeal with six other appeals and to expedite.
CCA	April 7, 1966	Order granting the Motion of the United States to expedite the appeal and setting the case for hearing during the week of May 23, 1966.

STOUT v. JEFFERSON COUNTY BOARD OF EDUCATION
(Northern District of Alabama)

DC	June 4, 1965	Complaint filed. Plaintiffs' motion for a preliminary injunction filed.
DC	June 22, 1965	Hearing on plaintiffs' motion for a preliminary injunction.
DC	June 24, 1965	Board ordered to submit a desegregation plan.
DC	June 30, 1965	Desegregation plan filed by the Board.
DC	July 9, 1965	Plaintiffs' objections to the desegregation plan filed.
DC	July 12, 1965	United States intervened.
DC	July 12, 1965	Objections to the Board's desegregation plan filed by the United States.
DC	July 21, 1965	Hearing on objections to the plan.
DC	July 22, 1965	Order entered approving plan.
DC	August 5, 1965	Notice of appeal filed by the United States.
CCA	August 6, 1965	Motion for an injunction pending appeal, or in the alternative, for expedited hearing filed by the United States.
DC	August 11, 1965	Notice of appeal filed by plaintiffs.

CCA	August 17, 1965	Order vacating and remanding the case to the district court for further consideration in light of Singleton v. Jackson Municipal Separate School District, 348 F. 2d 729 (C.A. 5, 1965) and Price v. Denison Independent School District, 348 F. 2d 1010 (C. A. 5, 1965).
DC	August 20, 1965	Motion filed by the United States for an order in conformity with the mandate of the Court of Appeals.
DC	August 27, 1965	Amendment to desegregation plan filed by the Board.
DC	August 27, 1965	Order entered by the District Court overruling objections of plaintiffs and the United States to the amended desegregation plan.
DC	October 25, 1965	United States filed notice of appeal.
DC	November 23, 1965	Order extending the time in which to file and docket the record with the Court of Appeals.
CCA	January 20, 1966	Record filed and docketed with the Court of Appeals.
CCA	March 22, 1966	Printed record filed in the Court of Appeals.
CCA	April 4, 1966	Motion filed by the United States to consolidate this appeal with six other appeals and to expedite.
CCA	April 7, 1966	Order granting the Motion of the United States to expedite the appeal and setting the case for hearing during the week of May 23, 1966.

UNITED STATES v. BOSSIER PARISH SCHOOL BOARD
(Western District of Louisiana)

DC	December 2, 1964	Complaint filed by private plaintiffs.
DC	January 4, 1965	Motion by U.S. to intervene.
DC	April 13, 1965	Defendants' motion to dismiss denied. Plaintiffs' motion for summary judgment granted; U.S.'s motion to intervene granted; permanent injunction ordering submission of desegregation plan, deferring question of faculty desegregation, and retaining jurisdiction. Lemon v. Bossier Parish School Board, 240 F. Supp. 709.
DC	April 30, 1965	Notice of appeal filed by defendants. Appeal No. 22,675.
DC	June 28, 1965	School Board submitted desegregation plan.
DC	July 12, 1965	U.S.'s objections to plan filed.
DC	July 28, 1965	Plaintiffs' objection to plan filed.
DC	July 28, 1965	Hearing on plan and objections.
DC	July 28, 1965	Order approving, with modifications proposed plan. Grades 1 & 12 in 1965-66, all grades by 1968-69; transfer plan for 1965-66, freedom of choice thereafter.
DC	August 5, 1965	U.S.'s notice of appeal filed. Appeal No. 22,863.
CCA	August 6, 1965	U.S.'s motion in No. 22,863 for an injunction pending appeal or in the alternative an expedited hearing.
CCA	August 17, 1965	Order in No. 22,863 vacating judgment of district court and remanding for further consideration in light of Singleton & Price.

DC	August 19, 1965	Motion by plaintiffs to clarify and amend previous order of April 13, 1965, so as to entitle specific plaintiff students to transfer.
DC	August 20, 1965	Order amending approved plan. Grades 1, 2, 11, 12 in 1965-66, all grades by 1967-68.
DC	August 23, 1965	Order denying plaintiffs' motion of August 19, 1965.
DC	August 27, 1965	Plaintiffs' notice of appeal from order of August 23, 1965. Appeal No. 22,934.
DC	September 9, 1965	Defendants' certificate of compliance with order of July 28, 1965, filed.
DC	October 19, 1965	U.S.'s notice of appeal from order of August 20, 1965. Appeal No. 23,365.
CCA	March 3, 1966	Appeal No. 22,675 taken by the Board from the court's order of April 13, 1965, argued; decision reserved.
CCA	April 4, 1966	Motion by U.S. to consolidate and expedite Appeal No. 23,365 and six other school appeals.
CCA	April 7, 1966	Motion of April 4, 1966 granted; U.S.'s brief due April 25, 1966. Argument scheduled for week of May 23, 1966.
CCA	April 8, 1966	Motion by original plaintiffs to intervene in Appeal No. 23,365.

JONES v. CADDO PARISH SCHOOL BOARD
(Western District of Louisiana)

DC	May 4, 1965	Complaint filed.
DC	June 14, 1965	Hearing on plaintiff's motion for preliminary injunction.
DC	June 14, 1965	Permanent injunction ordering submission of desegregation plan, deferring question of faculty desegregation, and retaining jurisdiction.
DC	July 7, 1965	School Board submitted desegregation plan.
DC	July 19, 1965	U.S. filed motion to intervene and objections to plan.
DC	July 21, 1965	Plaintiff's objections to plan filed.
DC	August 3, 1965	Order denying U.S.'s motion to intervene as untimely.
DC	August 3, 1965	Hearing on plan and objections.
DC	August 3, 1965	Order approving, with modifications, proposed plan. Grades 1 & 12 in 1965-66, all grades by 1968-69; transfer plan for 1965-66; freedom of choice plan thereafter.
DC	August 18, 1965	Motion by plaintiffs to vacate and reconsider order approving plan of August 3, 1965 in view of CCA order of August 17, 1965 in the Bossier case, No. 22,863.
DC	August 19, 1965	Order amending approved plan. Grades 1,2,11,12 in 1965-66, all grades by 1967-68.
DC	October 4, 1965	Notice of appeal filed by U.S. from order of August 3, denying leave to intervene.

CCA	April 4, 1966	Motion by U.S. to consolidate and expedite this appeal and six other school appeals.
CCA	April 7, 1966	Motion of April 4 granted; U.S.'s brief due April 25, 1966. Argument set for week of May 23, 1966.
CCA	April 8, 1966	Motion by original plaintiffs to intervene on appeal.

BANKS v. CLAIBORNE PARISH SCHOOL BOARD
(Western District of Louisiana)

DC	August 10, 1965	Complaint, motion for temporary restraining order filed by private plaintiffs.
DC	August 10, 1965	Order denying temporary restraining order.
DC	August 13, 1965	Plaintiffs' notice of appeal from order of August 10, filed.
CCA	August 26, 1965	Order remanding to district court for further consideration in light of Singleton and Price.
DC	August 27, 1965	Permanent injunction ordering submission of desegregation plan, deferring question of faculty desegregation, and retaining jurisdiction.
DC	September 24, 1965	School Board submitted desegregation plan.
DC	October 11, 1965	Plaintiffs' objections to plan filed.
DC	October 11, 1965	Order approving desegregation plan. Grades 1,8,9,12 in spring term, 1965-66; all grades by 1967-68. Transfer plan in 1965-66, freedom of choice plan thereafter.
DC	October 29, 1965	Plaintiffs' notice of appeal from order of October 11, 1965, filed.
CCA	February 7, 1966	Motion by U.S. to intervene as of right.
CCA	February 12, 1966	Motion by plaintiffs to consolidate this appeal with appeals in Jackson (No. 23,173) and City of Monroe (No. 23,253) school cases.
CCA	February 15, 1966	School Boards' oppositions to motions of February 7 and 12, filed.

CCA	March 10, 1966	Motion of U.S. to intervene granted.
CCA	March 10, 1966	Plaintiffs' motion of February 12 denied; the three appeals will be set for hearing on the same day and joint briefs may be filed.
CCA	April 4, 1966	Motion by U.S. to consolidate and expedite this appeal and six other school appeals.
CCA	April 7, 1966	Motion of April 4 granted; U.S.'s brief due April 25, 1966. Argument set for week of May 23, 1966.

JOHNSON v. JACKSON PARISH SCHOOL BOARD
(Western District of Louisiana)

DC	June 2, 1965	Complaint filed.
DC	July 27, 1965	Permanent injunction ordering submission of desegregation plan, deferring question of faculty desegregation, and retaining jurisdiction.
DC	September 16, 1965	School Board submitted desegregation plan.
DC	October 4, 1965	Plaintiffs' objections to plan filed.
DC	October 5, 1965	Order approving desegregation plan. Grades 1, 2, 11, 12 in spring term, 1965-66; all grades by 1967-68. Transfer plan in 1965-66, freedom of choice plan commencing 1966-67.
DC	November 1, 1965	Plaintiffs' notice of appeal filed.
CCA	February 7, 1966	Motion by U.S. to intervene.
CCA	February 12, 1966	Motion by plaintiffs to consolidate this appeal with appeals in Claiborne (No. 23,192) and City of Monroe (No. 23,253) school cases.
CCA	February 15, 1966	Appellees' oppositions to motions of February 7 and 12, filed.
CCA	March 10, 1966	Motion of U.S. to intervene granted.
CCA	March 10, 1966	Appellants' motion of February 12 denied; the three appeals to be set for hearing on the same day and joint briefs may be filed.
CCA	April 4, 1966	Motion by U.S. to consolidate and expedite this appeal and six other school appeals.

CCA	April 7, 1966	Motion of April 4 granted; U.S.'s brief due April 25, 1966. Argument set for week of May 23, 1966.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

JOHNSON	v. JACKSON PARISH SCHOOL BOARD	No. 23,173
BANKS	v. CLAIBORNE PARISH SCHOOL BOARD	No. 23,192
UNITED STATES	v. CADDO PARISH SCHOOL BOARD	No. 23,274
UNITED STATES	v. FAIRFIELD BOARD OF EDUCATION	No. 23,331
BROWN	v. BOARD OF EDUCATION OF THE CITY OF BESSEMER	No. 23,335
UNITED STATES	v. JEFFERSON COUNTY BOARD OF EDUCATION	No. 23,345
UNITED STATES	v. BOSSIER PARISH SCHOOL BOARD	No. 23,365
APPELLANTS	APPELLEES	

APPENDIX TO BRIEFS OF UNITED STATES

REVISED VOLUME I

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A. Introduction

This joint Appendix to the Government's briefs in seven school desegregation cases focuses on the relief issues common to all of the cases.

The first school case subsequent to the second Brown decision reached this Court in 1955.[1/] As of April, 1966, 42 cases had been appealed to this Court,[2/] all concerned with the development of means to effect the transition from segregated to desegregated school systems. When the appendix was filed in April, 1966, the district courts in the Fifth Circuit had considered 128 such cases[2/] in the same period. Between May 1, 1966 and March 1, 1967, at least 32 additional school desegregation cases have been filed in district courts, bringing the total to 160.[3/] The history of these cases shows that present modes of school litigation have substantially burdened the courts of this circuit; that the process has failed to produce uniformity in the application of the law of school desegregation; that there exists a substantial time lag between the enunciation of principles by this Court and their application by the district courts; that there is even some variance between this

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1/ Bell v. Rippey, N.D. Texas, Civil Action No. 6165, Notice of Appeal filed on October 4, 1955. Decided, sub nom. Brown v. Rippey, 233 F. 2d 796 (1956).

2/ See the Chart of Procedural Histories of Fifth Circuit School Desegregation Suits, infra. The procedural histories have not been updated. They are current as of April, 1966.

3/ These are suits filed by the United States. Additional cases may have been filed by private parties.

Court's decisions and later District Court decisions; that the law has not been successful in developing local responsibility to administer schools in compliance with the Constitution; and that the results of the process, measured by the number of Negro children being educated in integrated schools,[4/] have been limited. The facts and our briefs in these seven cases suggest that the Court should adopt a uniform and comprehensive decree which would govern the transitional stages of school desegregation in the seven school districts before the Court. It would, moreover, be unmistakable precedent for all school systems desegregating by free choice plans. The adoption of a uniform and comprehensive decree by this Court would have the effects of lightening the judicial burdens of school litigation and relitigation, bringing uniformity to the application of the law of school desegregation, enhancing local responsibility and compliance with a clearly defined law of school desegregation, and producing effective desegregation.

4/ In the seven cases here before the court only 0.19% of the Negro students were attending formerly white schools in 1965-1966 (Affidavit of St. John Barrett in support of motion to expedite and consolidate these cases). No enrollment statistics for 1966-67 are in the record. The Statistical Summary by the Southern Education Reporting Service, December 29, 1965, reflects the following statewide percentages: Alabama - 0.43%; Mississippi - 0.59%; Louisiana - 0.69%; Georgia - 2.66%; Florida - 9.76%; Texas - 17.2%.

B. A Statistical Compilation of Judicial Proceedings in School Desegregation Cases Arising in the Fifth Circuit 5/

1. Case Load

	District Court	Court of Appeals	Supreme Court
Number of Cases	128	42	5
Number of Orders Entered	513	76	10

2. Frequency of Appeals to this Court

Number of Cases With One or More Appeals	42
Number of Cases With Two or More Appeals	21
Number of Cases With Three or More Appeals	8
Number of Cases With Four or More Appeals	4
Number of Cases With Five or More Appeals	2

5/ These tables are based on the procedural histories in Volumes II and III of this Appendix. The procedural histories have not been updated. They are current as of April, 1966, and do not include suits filed after that date.

3. Chronology of Case Loads

	Cases Filed in District Court	Appeals Noticed
1954	0	0
1955	4	1
1956	4	6
1957	0	1
1958	2	1
1959	2	4
1960	5	5
1961	7	4
1962	12	7
1963	14	15
1964	16	10
1965	56	25
1966[6/]	5	1

6/ This table is based on the procedural histories in Volume II and III of this appendix. The procedural histories have not been updated and are current as of April, 1966. Suits filed after that date are not included.

C. A Statistical Analysis of Court-Approved School Desegregation Plans in the Fifth Circuit

When this appendix was filed in April, 1966, there were 99 court-approved choice plans in the circuit, 44 did not desegregate all grades by 1967; 78 failed to provide specific, non-racial criteria for denying choices;[7/] 79 failed to provide any start toward faculty desegregation; only 22 places provided for transfers to take courses not otherwise available; 4 included the Singleton transfer rule.

Currently there are at least 129 court-approved choice plans in the Fifth Circuit.[8/] Based on the plan analysis charts in the following section (The suits in which the United States is a party or amicus have been updated and new suits filed by the Government have been included. Private cases in which the United States is not participating have not been updated and are current as of April, 1966), 39 of these plans do not desegregate all grades by 1967; 80 fail to provide specific, non-racial criteria for denying choices;[7/] 79 fail to provide any start toward faculty desegregation; only 29 places provide for transfers to take courses not otherwise available; 27 include the Singleton transfer rule.

7/ We show here the number of plans without provisions that fall within these categories in our Plan Analysis Charts (which are attached to this Appendix): "Overcrowding Only" and "In Case of Overcrowding, Proximity Only."

8/ This includes court-approved choice plans in suits filed by the Government since April, 1966. There may be additional plans in suits filed by private parties since that date.

The chart which follows on the next eight pages, broken down by judicial districts, tabulates in greater detail the number and type of provisions to be found in court-approved plans. It shows the degree of nonuniformity between judicial districts and the extent to which the nonuniform court-approved plans in the Fifth Circuit lag behind judicial standards and H.E.W. procedures.

FTH CIRCUIT TRICTS (No. of Plans)	REACH OF PLAN	NOTICE		MECHANICS FOR EXERCISING CHOICE					NON-RACIAL ASSIGNMENT OF NON-CHOOSERS
	All Grades Covered By 1967	Personal Notice	News-paper Notice	Annual Choice	All Students Must Choose	Second Choice	Officials Not to Influence Choice	Routing of Buses to Accommodate Choice	
BAMA									
rthern (8)	5	1	8	8	1	0	0	1	0
ddle (5)	5	5	5	5	5	1	5	5	5
uthern (4)	3	4	3	4	4	0	3	4	2
IDA									
rthern (4)	1	4	2	4	0	0	0	0	0
ddle (9)	4	4	4	9	1	2	0	1	0
uthern (4)	4	3	1	4	0	0	0	0	0
GIA									
rthern (1)	0	0	0	1	0	0	0	0	0
ddle (5)	1	4	0	5	0	0	0	0	0
thern (2)	1	0	1	2	0	0	0	0	0
IANA									
tern (18)	11	16	12	18	3	3	3	3	2
tern (24)	17	21	20	24	0	0	0	0	0

TH CIRCUIT RICTS (No. of Plans)	REACH OF PLAN	NOTICE		MECHANICS FOR EXERCISING CHOICE					NON-RACIAL ASSIGNMENT OF NON-CHOOSERS
	All Grades Covered By 1967	Personal Notice	News-paper Notice	Annual Choice	All Students Must Choose	Second Choice	Officials Not to Influence Choice	Routing of Buses to Accommodate Choice	
SSIPPI									
thern (12)	12	11	12	12	7	10	7	3	0
thern (20)	20	18	18	20	12	11	6	6	6
thern (1)	1	0	0	1	0	0	0	0	0
thern (6)	2	0	0	6	0	0	0	0	0
tern (4)	2	2	2	4	0	0	2	2	0
ern (2)	1	0	0	2	0	0	0	0	0
als									
ama (17)	13	10	16	17	10	1	8	10	7
ida (17)	9	11	7	17	1	2	0	1	0
gia (8)	2	4	1	8	0	0	0	0	0
siana (42)	28	37	32	42	3	3	3	3	2
ssippi (32)	32	29	30	32	19	21	13	9	6
(13)	6	2	2	13	0	0	2	2	0
(129)	90	93	88	129	31	27	26	25	15

TH CIRCUIT

TRICTS (No. of Plans)	CRITERIA FOR DENYING CHOICE				SPECIAL TRANSFERS			
	Over-crowding Only	In Case of Overcrowding, Proximity Only	Pupil Placement Criteria	"Comparable School" Provision	To Take Courses Not Available	Newly Enrolled Students	Students Who Move	Singleton Transfer Rule
AMA								
rthern (8)	1	3	1	0	0	5	0	0
ddle (5)	5	5	0	0	1	3	1	1
uthern (4)	4	3	0	0	0	3	1	0
IDA								
thern (4)	0	1	3	0	0	3	0	1
dle (9)	1	3	1	0	2	4	0	0
thern (4)	0	0	4	0	1	1	0	0
A								
hern (1)	1	1	0	0	1	0	0	0
le (5)	3	3	0	0	0	2	0	0
ern (2)	0	0	1	0	0	0	0	0
NA								
rn (18)	11	3	10	15	3	3	0	1
rn (24)	0	3	0	21	0	14	0	0

CIRCUIT ICTS (No. of Plans)	CRITERIA FOR DENYING CHOICE				SPECIAL TRANSFERS			
	Over-crowding Only	In Case of Overcrowding, Proximity Only	Pupil Placement Criteria	"Comparable School" Provision	To Take Courses Not Available	Newly Enrolled Students	Students Who Move	Singleton Transfer Rule
SIPPI								
hern (12)	5	11	0	0	9	9	1	10
hern (20)	15	18	0	0	12	15	1	14
hern (1)	0	0	0	0	0	0	1	0
hern (6)	0	0	0	0	0	0	0	0
ern (4)	2	2	0	0	0	2	1	0
ern (2)	0	0	0	0	0	0	0	0
als								
ama (17)	10	11	1	0	1	11	2	1
ida (17)	1	4	8	0	3	8	0	1
gia (8)	4	4	1	0	1	2	0	0
siana (42)	11	6	10	36	3	17	0	1
issippi (32)	20	29	0	0	21	24	2	24
s (13)	2	2	0	0	0	2	2	0
(129)	48	56	20	36	29	62	6	27

IRCUIT	FACULTY DESEGREGATION			DESEGREGATION OF PROGRAMS, FACILITIES, SERVICES, AND ACTIVITIES	
S (No. of Plans)	Faculty Meetings & Inservice Training	Elimination of Race in New Hiring & Assignment	Correction of Past Racial Assignments	General Provision	Transportation
rn (8)	0	1	1	1	0
(5)	0	5	5	5	5
rn (4)	0	3	0	3	1
rn (4)	1	0	0	1	1
(9)	1	5	0	3	2
rn (4)	0	2	0	1	0
rn (1)	0	0	0	0	0
(5)	0	0	0	0	1
rn (2)	0	0	0	0	0
A					
n (18)	0	3	3	3	5
n (24)	0	0	0	0	1

CIRCUIT CTS (No.of Plans)	FACULTY DESEGREGATION			DESEGREGATION OF PROGRAMS, FACILITIES, SERVICES, AND ACTIVITIES	
	Faculty Meetings & Inservice Training	Elimination of Race in New Hiring & Assignment	Correction of Past Racial Assignments	General Provision	Transportation
IPPI					
ern (12)	2	10	0	9	12
ern (20)	5	17	5	12	15
ern (1)	0	0	0	1	0
ern (6)	0	0	0	0	0
rn (4)	1	2	0	2	2
rn (2)	0	0	0	0	0
ls					
ma (17)	0	9	6	9	6
da (17)	2	7	0	5	3
la (8)	0	0	0	0	1
lana (42)	0	3	3	3	6
sippi (32)	7	27	5	21	27
(13)	1	2	0	3	2
(129)	10	48	14	41	45

FIFTH CIRCUIT DISTRICTS (No. of Plans)	EQUALIZING EDUCATIONAL PROGRAMS AND FACILITIES			PROVISION FOR REPORTING TO COURT
	Closing of Inferior Schools	Equalization of Expenditures Curriculum, or Facilities	Remedial Educational Programs	
ALABAMA				
Northern (8)	1	1	0	1
Middle (5)	5	1	4	4
Southern (4)	2	0	0	0
FLORIDA				
Northern (4)	0	0	0	1
Middle (9)	0	0	0	0
Southern (4)	0	0	0	0
GEORGIA				
Northern (1)	0	0	0	0
Middle (5)	0	0	0	0
Southern (2)	0	0	0	0
LOUISIANA				
Eastern (18)	1	3	3	8
Western (24)	0	0	0	0

FIFTH CIRCUIT DISTRICTS (No. of Plans)	EQUALIZING EDUCATIONAL PROGRAMS AND FACILITIES			PROVISION FOR REPORTING TO COURT
	Closing of Inferior Schools	Equalization of Expenditures Curriculum, or Facilities	Remedial Educational Programs	
MISSISSIPPI				
Northern (12)	0	8	2	4
Southern (20)	1	11	6	4
TEXAS				
Northern (1)	0	0	0	0
Southern (6)	0	0	0	0
Eastern (4)	0	0	0	0
Western (2)	0	0	0	0
Subtotals				
Alabama (17)	8	2	4	5
Florida (17)	0	0	0	1
Georgia (8)	0	0	0	0
Louisiana (42)	1	3	3	8
Mississippi (32)	1	19	8	8
Texas (13)	0	0	0	0
TOTALS (129)	10	24	15	22

D. Plan Analysis Charts

The following charts analyze the component provisions of the court-approved choice plans in this Circuit. Plans are listed on the charts by state and judicial district. Notation has been made of geographic plans but these have not been analyzed. Suits which have not yet resulted in court-approved plans have also been noted. Cases in which the United States is a party or amicus have been updated, and new suits which have been filed by the Government between May 1, 1966 and March 1, 1967 have been included. Private cases in which the United States is not participating have not been updated. They are current as of April, 1966.

The charts are in four groupings. Each grouping includes several categories and subcategories describing the provisions which may be found in school plans. The categories in each grouping are as follows:

Group 1: Reach of Plan
Notice
Mechanics for Exercising Choice
Nonracial Assignment of Nonchoosers

Group 2: Criteria for Denying Choice
Special Transfers

Group 3: Faculty Desegregation
Desegregation of Programs, Facilities, Services and Activities

Group 4: Equalizing Educational Programs and Facilities
Provision for Reporting to Court

This format makes it possible to obtain a circuit-wide view of the extent to which each type of provision has

been incorporated in school plans. An explanation of the category and the subcategory headings precedes each grouping.

Explanation of Category Headings

REACH OF PLAN

All Grades Covered by:

This column gives the year when all twelve grades will be reached by the choice plan. Thus, if the plan provides that as of the 1967-1968 school year, children in all grades may choose integrated schools, the column would be marked "1967". The chart does not show how many grades or which grades are now covered.

NOTICE

Personal Notice:

An "X" in this column signifies that some form of personal notice of the rights of free choice is given to students or parents of students entering desegregated grades. The chart does not differentiate between notices mailed home and notices sent home with the students. It does not reflect the completeness and clarity of the notice.

Newspaper Notice:

An "X" signifies that the desegregation plan requires the local school board on or shortly before the opening of the choice period, to publish notice of the desegregation plan in at least one newspaper serving the community. The chart does not differentiate publication in the "Legal Notice" section of the newspaper from other more conspicuous forms of publication. It does not show whether repeated publication is required, or whether the notice must appear in all news media serving the community.

MECHANICS FOR EXERCISING CHOICE

Annual Choice:

An "X" signifies that students are given a chance each year to choose an integrated school rather than, for example, being offered a choice in the first grade which would be binding until transition is made to junior high school in the seventh grade.

All Students Must Choose:

An "X" signifies that in desegregated grades, all children, both white and Negro, must make a choice, even if they wish to remain in the school they previously attended. This element differentiates true freedom of choice plans from transfer plans. Under transfer plans, only those students wishing to change to another school are required to make an affirmative choice.

Second Choice:

An "X" signifies that if, for any reason, a student's first choice of schools is denied, the plan provides that he be given a second choice of all other schools in the system, at least where space is available.

Officials Not to Influence Choice:

An "X" signifies that the plan provides at least a general provision barring action by officials of the school system - principals, teachers, staff - to influence the choice of students.

Routing Buses to Accommodate Choice:

An "X" signifies that the plan provides at least for reasonable rearrangement of bus routes so that students who choose to go to an integrated school will be able to get there. A blank in this column does not necessarily represent a deficiency in the plan; some school districts, particularly urban districts, do not provide bus transportation.

NON-RACIAL ASSIGNMENT OF NON-CHOOSERS

An "X" signifies that students in desegregated grades who have not affirmatively chosen a school are assigned on some basis other than race or prior attendance. Proximity to the school is the predominant non-racial basis for assignment. If a plan makes no reference to non-choosers, it is assumed that prior assignments would continue.

ALABAMA

ern District	REACH OF PLAN	NOTICE		MECHANICS FOR EXERCISING CHOICE					NON-RACIAL ASSIGNMENT OF NON-CHOOSERS
	All Grades Covered By	Personal Notice	News-paper Notice	Annual Choice	All Students Must Choose	Second Choice	Officials Not to Influence Choice	Routing of Buses to Accommodate Choice	
mstrong v. . of Ed. of rmingham	1969		X	X					
nnett v. Madi- n Co. Alabama . of Ed.	1969		X	X					
ykins v. Fair- eld Bd. of Ed.	1967		X	X				1/	
own v. City . of Ed. of ssemer	1967		X	X				1/	
reford v. Cy. Huntsville, a. Bd. of Ed.	1969		X	X					
tton v. Lee reene Co.)	1967 2/	X	X	X	X 3/			X	
No school transportation system.									

Plan states only that by 1/1/67, Bd. will submit plan for desegregation of grades 1-8, grades 9-12 covered by 1966, Bd. Resolution, 2/18/66, adds grade 1 to grades covered by 1967.

Transfer plan: non-choosers remain in school previously attended.

ALABAMA	REACH OF PLAN	NOTICE		MECHANICS FOR EXERCISING CHOICE					NON-RACIAL ASSIGNMENT OF NON-CHOOSERS
rthern District	All Grades Covered By	Personal Notice	News-paper Notice	Annual Choice	All Students Must Choose	Second Choice	Officials Not to Influence Choice	Routing of Buses to Accommodate Choice	
Miller v. Bd. of Ed. of Gadsden, Alabama	1967		X	✗					
Stout v. Jefferson Co., Bd. of Ed.	1967		X	✗					

ALABAMA

Middle District	REACH OF PLAN	NOTICE		MECHANICS FOR EXERCISING CHOICE					NON-RACIAL ASSIGNMENT OF NON-CHOOSERS
	All Grades Covered By	Personal Notice	Newspaper Notice	Annual Choice	All Students Must Choose	Second Choice	Officials Not to Influence Choice	Routing of Buses to Accommodate Choice	
Carr v. Montgomery Co. School Board	1967	X	X	X	X	X	X	X	X
Harris v. Bullock Co. Bd. of Ed.	1967	X	X	X	X		X	X	X
Harris, et al. v. Crenshaw Co. Bd. of Ed.	1967	X	X	X	X		X	X	X
Lee v. Macon Co. Bd. of Ed.	1966	X	X	X	X		X	X	X
U.S. v. Lowndes Co. Bd. of Ed.	1967	X	X	X	X		X	X	X

BAMA thern Dis- ct	REACH OF PLAN	NOTICE		MECHANICS FOR EXERCISING CHOICE					NON-RACIAL ASSIGNMENT OF NON-CHOOSERS
	All Grades Covered By	Personal Notice	News-paper Notice	Annual Choice	All Students Must Choose	Second Choice	Officials Not to Influence Choice	Routing of Buses to Accommodate Choice	
wn v. Bd. Ed. of City Demopolis	Suit filed August 13, 1965. No court approved desegregation plan.								
is v. Bd. Commis-ners of Mo-e County	1960 Geographic Plan with First Graders having a choice of the school in their district or the nearest school formerly attended exclusively by their race.								
. v. Choctaw Bd. of Ed. al.	1967	X	X	X	X		X	X	
. v. Hale Bd. of Ed. al.	1967	X	X	X	X		X	X	X
v. Perry Bd. of Ed. l.	1967	X	X	X	X		X	X	X
v. Wilcox Bd. of Ed., l.	1968 1/	X		X	X			X 2/	
Court order 967-68 or, y fall semester 1968-69.	8/31/66, as to grades 1-3, 7-9 only for 1966; other grades by spring semester if Fifth Circuit does not rule by 60 days before opening of spring term of 1967,								
s to certain transfer students only. Court order, 1/16/67.									
of April, 1966									

FLORIDA

Northern District

	REACH OF PLAN	NOTICE		MECHANICS FOR EXERCISING CHOICE					NON-RACIAL ASSIGNMENT OF NON-CHOOSERS
	All Grades Covered By	Personal Notice	News-paper Notice	Annual Choice	All Students Must Choose	Second Choice	Officials Not to Influence Choice	Routing of Buses to Accommodate Choice	
Augustus v. Bd. of Pub. Inst. Escambia County	1973	x		x					
Steele v. Bd. of Pub. Inst. Leon County	1974 [1]	x		x					
Wright v. Bd. of Pub. Inst. Alachua County	1965	x	x	x					
Youngblood v. Bd. of Pub. Inst. Bay County	1973 [2]	x[3]	x	x					

1/ 1963 - Grades 1 - 12 Transfer. Abolishment of dual zones one grade a year.

2/ 1964 Grades 1 7,9 Transfer.

3/ As to 115 named students only. Court order 9/15/66.

* As of April, 1966

FLORIDA Middle District	REACH OF PLAN	NOTICE		MECHANICS FOR EXERCISING CHOICE					NON-RACIAL ASSIGNMENT OF NON-CHOOSERS
	All Grades Covered By	Personal Notice	News-paper Notice	Annual Choice	All Students Must Choose	Second Choice	Officials Not to Influence Choice	Routing of Buses to Accommodate Choice	
Blalock v. Bd. of Pub. Inst. Lee County	1969		X						
*Bradley v. Belot Pub. Inst. Pinellas County	1966	Geographic Plan							
*Braxton v. Bd. of Pub. Inst. Duval County	1972	Geographic Plan							
*Ellis v. Bd. of Pub. Inst. Orange County	1967	X				X			
*Harvest v. Bd. of Pub. Inst. Manatee County	1965		X	X					
*Lawson v. Bd. of Pub. Inst. Suwanne County	This suit was filed January 25, 1965. It does not have a Court approved desegregation plan.								
*Mannings v. Bd. of Pub. Inst. Hillsborough Co.	1973	X							
Mays v. Bd. of Pub. Inst. Sarasota Co.	1963								
Mills v. Bd. of Pub. Inst. Polk Co.	1968								

* As of April, 1966

FLORIDA

Middle District

	REACH OF PLAN	NOTICE		MECHANICS FOR EXERCISING CHOICE					NON-RACIAL ASSIGNMENT OF NON-CHOOSERS
	All Grades Covered By	Personal Notice	News-paper Notice	Annual Choice	All Students Must Choose	Second Choice	Officials Not to Influence Choice	Routing of Buses to Accommodate Choice	
Scott v. Bd. of Pub. Inst. of St. John's County	This suit was filed April 6, 1962. It does not have a court approved desegregation plan.								
Tillman v. Bd. of Pub. Inst. Volusia County	1972				x				
Weaver v. Bd. of Pub. Inst. Brevard County	1967	x	x	x					
Zimmerman v. Bd. of Pub. Inst. Columbia County	1965	x	x			x		x	
* As of April, 1966									

FLORIDA

Southern District

	REACH OF PLAN	NOTICE		MECHANICS FOR EXERCISING CHOICE					NON-RACIAL ASSIGNMENT OF NON-CHOOSERS
	All Grades Covered By	Personal Notice	Newspaper Notice	Annual Choice	All Students Must Choose	Second Choice	Officials Not to Influence Choice	Routing of Buses to Accommodate Choice	
*Gibson v. Bd. of Pub. Inst. Dade County	1960	X							
*Hall v. Bd. of Pub. Inst. Broward County	1963	X							
*Holland v. Bd. of Pub. Inst. Palm Beach Co.	1962	Geographic Plan							
*Major v. Bd. of Pub. Inst. Monroe County	1965	X							
*Sharpton v. Bd. of Pub. Inst. Indian River Co.	1970		X						
* As of April, 1966									

GEORGIA Northern District	REACH OF PLAN	NOTICE		MECHANICS FOR EXERCISING CHOICE					NON-RACIAL ASSIGNMENT OF NON-CHOOSERS
	All Grades Covered By	Personal Notice	Newspaper Notice	Annual Choice	All Students Must Choose	Second Choice	Officials Not to Influence Choice	Routing of Buses to Accommodate Choice	
*Calhoun v. Latimer (Atlanta)	1968			X					

* As of April, 1966

GEORGIA Middle District	REACH OF PLAN	NOTICE		MECHANICS FOR EXERCISING CHOICE					NON-RACIAL ASSIGNMENT OF NON-CHOOSERS
	All Grades Covered By	Personal Notice	Newspaper Notice	Annual Choice	All Students Must Choose	Second Choice	Officials Not to Influence Choice	Routing of Buses to Accommodate Choice	
*Bivins v. Bd. of Pub. Ed. & Orphanage for Bibb Co.	1968			X					
*Gaines v. Dougherty Co. Bd of Ed.	1967	X 2/		X					
*Harrington v. Colquitt Co. Bd. of Ed. & City of Moultrie Bd. of Commissioners	1968	X 3/		X					
*Lockett v. Bd. of Ed. of Muscogee Co. Sch Dist.	1968	X 1/		X					
*Thomie v. Houston Bd. of Ed.	1968	X 1/		X					

1/ "adequate notice" only.
2/ "timely notice" only.
3/ Type not specified 5 day prior notice of transfer time required.

* As of April, 1966

GEORGIA Southern District	REACH OF PLAN	NOTICE		MECHANICS FOR EXERCISING CHOICE					NON-RACIAL ASSIGNMENT OF NON-CHOOSERS
	All Grades Covered By	Personal Notice	Newspaper Notice	Annual Choice	All Students Must Choose	Second Choice	Officials Not to Influence Choice	Routing of Buses to Accommodate Choice	
*Acree v. Richmond Co. Bd. of Ed. 1/				X					
*Gibson v. Glynn County Board of Education	No Court-Approved desegregation plan.								
Stell v. Savannah-Chatham Co. Bd. of Education	1966		X	X					
Turner v. Goolsby (Taliaferro Co.)	Suit filed September 10, 1965. No Court-Approved desegregation plan.								

1/ Available information on this plan insufficient; first three grades to have been desegregated in 1964.

* As of April, 1966

LOUISIANA Eastern District	REACH OF PLAN	NOTICE		MECHANICS FOR EXERCISING CHOICE					NON-RACIAL ASSIGNMENT OF NON-CHOOSERS
	All Grades Covered By	Personal Notice	Newspaper Notice	Annual Choice	All Students Must Choose	Second Choice	Officials Not to Influence Choice	Routing of Buses to Accommodate Choice	
Banks v. St. James Parish Sch. Bd.	1967	X 1/		X					
Boyd v. Pointe Coupee Parish Sch. Bd.	1968	X 1/		X					
*Bush v. Orleans Parish Sch. Bd.	1970	Geographic Plan							
*Carter v. Sch. Bd. of West Feliciana Parish	1967	X 1/		X					
Charles v. Ascension Parish Sch. Bd.	1967	X 1/		X					
*Danbridge v. Jefferson Parish Sch. Bd.	1967	X	X	X					
*Davis v. East Baton Rouge Sch. Bd.	1968		X	X					
Dunn v. Livingston Parish Sch. Bd.	1968	X 1/	X	X					

1/ ". . . adequate notice to the extent that all students affected are given a reasonable and conscious opportunity to apply for admission."

* As of April, 1966

LOUISIANA Eastern District	REACH OF PLAN	NOTICE		MECHANICS FOR EXERCISING CHOICE					NON-RACIAL ASSIGNMENT OF NON-CHOOSERS
	All Grades Covered By	Personal Notice	Newspaper Notice	Annual Choice	All Students Must Choose	Second Choice	Officials Not to Influence Choice	Routing of Buses to Accommodate Choice	
*George v. Davis (East Feliciana Parish)	1967	X	X	X					
Hall v. St. Helena Parish Sch. Bd.	1967	X	X	X					
*Harris v. St. John the Baptist Parish Sch. Bd.	1967	X	X	X					
*Hill v. Lafourche Parish Sch. Bd.	Suit filed December 13, 1965. Order of March 23, 1966 regarding board to submit plan								
Jenkins v. City of Bogalusa Sch. Bd.	1968	X	X	X					
*Moore v. Tangipahoa Parish Sch. Bd	1968	X	X	X					
*Moses v. Washington Parish Sch. Bd	1967	X	X	X					
*Redmond v. Terrebonne Parish Sch. Bd	Suit filed June 1, 1965. Order of March 23, 1966 requiring board to submit plan.								
* As of April,	1966								

LOUISIANA Eastern District	REACH OF PLAN	NOTICE		MECHANICS FOR EXERCISING CHOICE					NON-RACIAL ASSIGNMENT OF NON-CHOOSERS
	All Grades Covered By	Personal Notice	News-paper Notice	Annual Choice	All Students Must Choose	Second Choice	Officials Not to Influence Choice	Routing of Buses to Accommodate Choice	
Smith v. St. Tammany Parish Sch. Bd.	1967	X	X	X	X	X	X	X	X 1/
*Thomas v. West Baton Rouge Parish Sch. Bd	1968	X 2/		X					
Williams v. Iberville Parish Sch. Bd	1970			X					
U.S. v. St. Bernard Parish Sch. Bd.	1967	X	X	X	X	X	X	X	X 1/
U.S. v. Plaquemines Parish Sch. Bd.	1967	X	X	X	X	X	X	X	

1/ For 1966-67 only, any student failing to exercise a choice shall be assigned to the school to which he was previously assigned, subject to his right to request a transfer.

2/ ". . . adequate notice to the extent that all students affected are given a reasonable and conscious opportunity to apply for admission."

* As of April, 1966

LOUISIANA Western District	REACH OF PLAN	NOTICE		MECHANICS FOR EXERCISING CHOICE					NON-RACIAL ASSIGNMENT OF NON-CHOOSERS
	All Grades Covered By	Personal Notice	Newspaper Notice	Annual Choice	All Students Must Choose	Second Choice	Officials Not to Influence Choice	Routing of Buses to Accommodate Choice	
*Andrews v. City of Monroe	1967	X		X					
Banks v. Claiborne Parish Sch. Bd.	1967	X		X					
*Battise v. Acadia Parish Sch. Bd.	1968[1]	X	X	X					
*Boudreaux v. St. Mary Parish Sch. Bd.	1965[2]		X	X					
*Celestain v. Vermillion Parish Sch.Bd.	Suit filed April 4, 1966. No court-approved desegregation plan.								
*Conley v. Lake Charles Sch.Bd. & Calcasieu Parish Sch. Bd.	1968	X		X					
*Gilbert v. Webster Parish Sch. Bd.	1967		X	X					

1/ Original plan - all grades by 1968. Amended plan added two grades in 1965 which may result in all grades by 1967.

2/ 1965 - Transfers in all grades. 1966 - Transfers and initial assignments in all grades not based on race and dual zones abolished.

* As of April, 1966

LOUISIANA Western District	REACH OF PLAN	NOTICE		MECHANICS FOR EXERCISING CHOICE					NON-RACIAL ASSIGNMENT OF NON-CHOOSERS
	All Grades Covered By	Personal Notice	Newspaper Notice	Annual Choice	All Students Must Choose	Second Choice	Officials Not to Influence Choice	Routing of Buses to Accommodate Choice	
*Gordan v. Jeff Davis Parish Sch. Board	1968[1]	X	X	X					
*Graham v. Evangeline Parish Sch. Board	1968[1]	X	X	X					
*Henderson v. Iberia Parish School Board	1965		X	X					
Johnson v. Jackson Parish School Board	1967	X	X	X					
Jones v. Caddo Parish School Board	1967	X	X	X					
Lemon v. Bossier Parish School Board	1968	X	X	X					
*Monteilh v. St. Landry Parish School Board	1968[1]	X	X	X					
*Robertson v. Natchitoches Parish Sch. Bd.	1967	X	X	X					

1/ Original plan - all grades by 1968. Amended plan added two grades in 1965 which may result in all grades by 1967.

* As of April 1966

LOUISIANA Western District	REACH OF PLAN	NOTICE		MECHANICS FOR EXERCISING CHOICE					NON-RACIAL ASSIGNMENT OF NON-CHOOSERS
	All Grades Covered By	Personal Notice	Newspaper Notice	Annual Choice	All Students Must Choose	Second Choice	Officials Not to Influence Choice	Routing of Buses to Accommodate Choice	
Smith v. Concordia Parish Sch. Bd.	1967	X	X	X					
*Trahan v. Lafayette Parish Sch. Bd.	1968 1/	X	X	X					
*Thomas v. St. Martin Parish Sch. Bd.	1965 2/	X	X	X					
Valley v. Rapides Parish Sch. Bd.	1967	X	X	X					
*Williams v. Kimbrough (Madison Parish)	1967	X	X	X					
U.S. v. Bienville Parish Sch. Bd.	1967	X	X	X					

1/ Original plan - grades by 1968. Amended plan added two grades in 1965 which may result in all grades by 1967.

2/ 1965 - Transfers in all grades. 1966 - Transfers and initial assignments in all grades not based on race and dual zones abolished.

* As of April, 1966

LOUISIANA Western District	REACH OF PLAN	NOTICE		MECHANICS FOR EXERCISING CHOICE					NON-RACIAL ASSIGNMENT OF NON-CHOOSERS
	All Grades Covered By	Personal Notice	Newspaper Notice	Annual Choice	All Students Must Choose	Second Choice	Officials Not to Influence Choice	Routing of Buses to Accommodate Choice	
U.S. v. DeSoto Parish Sch. Bd.	Suit filed January 11, 1967. No court-approved desegregation plan.								
U.S. v. Grant Parish Sch. Bd.	1967	X	X	X					
U.S. v. LaSalle Parish Sch. Bd.	1967	X	X	X					
U.S. v. Lincoln Parish Sch. Bd.	1967	X	X	X					
U.S. v. Richland Parish Sch. Bd.	1967	X		X					

MISSISSIPPI Northern District	REACH OF PLAN	NOTICE		MECHANICS FOR EXERCISING CHOICE					NON-RACIAL ASSIGNMENT OF NON-CHOOSERS
	All Grades Covered By	Personal Notice	Newspaper Notice	Annual Choice	All Students Must Choose	Second Choice	Officials Not to Influence Choice	Routing of Buses to Accommodate Choice	
*Ayers v. Western Line Cons. School District	Suit filed January 11, 1966. No court-appointed desegregation plan.								
Baird v. Benton County Board of Education	1967	X	X	X		X	X		
* Bell v. West Point Mun. Sep. Sch. Dis. (Clay County)	Suit filed August 13, 1965. No court-approved desegregation plan. District operating under HEW plan.								
*Cowan v. Bolivar County Bd. of Education	1967	X	X	X		X			
* Henry v. Clarksdale Mun. Sep. School District	1967	Geographic Plan							
U.S. v. Aberdeen Mun. Sep. School District	1967	X	X	X	X	X	X	X	
U.S. v. Calhoun County Board of Education	1967	X	X	X	X	X	X	X	

* As of April, 1966

MISSISSIPPI Northern District	REACH OF PLAN	NOTICE		MECHANICS FOR EXERCISING CHOICE					NON-RACIAL ASSIGNMENT OF NON-CHOOSERS
	All Grades Covered By	Personal Notice	Newspaper Notice	Annual Choice	All Students Must Choose	Second Choice	Officials Not to Influence Choice	Routing of Buses to Accommodate Choice	
U.S. v. Carroll Co. Board of Education	1967	X	X	X		X			
U.S. v. Corinth Mun. Separate School District	1967	X	X	X	X	X	X		
U.S. v. Greenwood Mun. Sep. School Dist.	1967	X	X			X			
	one school operating under geographic plan.								
U.S. v. Indianola Mun. School Dist.	1967	X	X	X	X		X		
	portion of district operating under geographic plan								
U.Sv v. Iuka Spec. Mun. Sep. Sch. Dis.	1967		X	X	X	X	X	X	
U.S. v. Leflore Co. School District	1967	X	X	X		X			
U.S. v. Louisville Municipal Sep. Sc.Dt	Suit filed October 3, 1966. No court-ordered desegregation plan.								
U.S. v. Sunflower County School Dist.	1967	X	X	X	X	X	X		
U.S. v. Humpreys County School District	1967	X	X	X	X				

MISSISSIPPI
Southern District

	REACH OF PLAN	NOTICE		MECHANICS FOR EXERCISING CHOICE					NON-RACIAL ASSIGNMENT OF NON-CHOOSERS
	All Grades Covered By	Personal Notice	Newspaper Notice	Annual Choice	All Students Must Choose	Second Choice	Officials Not to Influence Choice	Routing of Buses to Accommodate Choice	
Alexander v. Holmes Co. Bd. of Ed.	1967	X	X	X					
Anderson v. Canton Munic. Sch. Dist.	1967	X	X	X	X	X			X
Anderson v. Madison Co. School Dist.	1967	X	X	X	X	X		X	X
Barnhardt v. Meridian Sep. Sch. Dist.	1967	X	X	X	X			X[1/]	
Blackwell v. Issaquena Co. Bd. of Ed.	1967		X	X					
***Gladney v. Moss Pt. Munic.Sep. Sch. Dist.**	1967	X	X	X					
Hudson v. Leake Co. Sch. Bd.	1967	X	X	X					

1/ Within desegregated grades routing of transportation determined by school enrollment without regard to race.

* As of April, 1966

MISSISSIPPI · Southern District	REACH OF PLAN	NOTICE		MECHANICS FOR EXERCISING CHOICE					NON-RACIAL ASSIGNMENT OF NON-CHOOSERS
	All Grades Covered By	Personal Notice	Newspaper Notice	Annual Choice	All Students Must Choose	Second Choice	Officials Not to Influence Choice	Routing of Buses to Accommodate Choice	
*Killingsworth v. Enterprise Consld.Sch.Dis.	1967		X	X					
Lee v. U.S. (Forrest Co.)	1967	X	X	X	X 2/				
Mason v. Biloxi Munic. Sep. Sch.Dist.	1967	X	X	X					
Singleton v. Jackson Munic. Sep.Sch. Dist.	1967	X	X	X					
U.S. v. Amite County School District	1967	X	X	X	X	X	X	X	X
U.S. v. Covington Co. School Dist.	1967	X	X	X	X	X	X	X	X
U.S. v. Hinds County School Board	Suit filed January 11, 1967. No court-approved desegregation plan.								

2/ "All pupils enrolled in the 1st, 8th, 9th, 10th, 11th, and 12th grades shall be admitted to any of the schools.

* As of April, 1966

MISSISSIPPI Southern District	REACH OF PLAN	NOTICE		MECHANICS FOR EXERCISING CHOICE					NON-RACIAL ASSIGNMENT OF NON-CHOOSERS
	All Grades Covered By	Personal Notice	Newspaper Notice	Annual Choice	All Students Must Choose	Second Choice	Officials Not to Influence Choice	Routing of Buses to Accommodate Choice	
U.S. v. Kemper County School Board	1967	X		X		X			
U.S. v. Natchez Special Munic. Sch.Dis.	1967	X	X	X	X	X			
US. v. Neshoba Co. School District	Suit filed. No court-approved desegregation plan.								
U.S. v. North Pike Consld. School Dist.	1967	X	X	X	X	X	X		
U.S. v. North Tippah Cons. School Dist.	1967	X	X	X	X	X	X		
U.S. v. Noxubee Co. School District	1967	X		X	X	X			
U.S. v. Philadelphia Mun. Sep.Sch. Dist.	Suit filed August 18, 1966. No court-approved desegregation plan.								
U.S. v. Lauderdale County Sch. Dist.	Suit filed August 18, 1966. No court-approved desegregation plan.								

MISSISSIPPI Southern District	REACH OF PLAN	NOTICE		MECHANICS FOR EXERCISING CHOICE					NON-RACIAL ASSIGNMENT OF NON-CHOOSERS
	All Grades Covered By	Personal Notice	Newspaper Notice	Annual Choice	All Students Must Choose	Second Choice	Officials Not to Influence Choice	Routing of Buses to Accommodate Choice	
U.S. v. South Pike Co. Cons. Sch. District	1967	X	X	X	X	X	X	X	X
U.S. v. Wilkinson Co. Sch. Dist.	1967	X	X	X	X	X	X	X	X

TEXAS Northern District	REACH OF PLAN	NOTICE		MECHANICS FOR EXERCISING CHOICE					NON-RACIAL ASSIGNMENT OF NON-CHOOSERS
	All Grades Covered By	Personal Notice	Newspaper Notice	Annual Choice	All Students Must Choose	Second Choice	Officials Not to Influence Choice	Routing of Buses to Accommodate Choice	
* Avery v. Wichita Falls Ind. Sch. Dist.	This Case Was Closed in 1962 Without a Desegregation Plan.								
* Britton v. Folsom (Dallas Ind. Sch. Dist.)	1967	Georgraphic		Plan					
* Flax v. Potts (Ft. Worth Ind. Sch. Dist.)	1967			X					
* Jackson v. Rawdon (Mansfield Ind. Sch. Dist.)	Order that defendants "...are hereby forever restrained from refusing admission to Mansfield High School to any of the plaintiffs shown to be qualified in all respects for admission."1								
* Rainwater v. Smith (Carrollton Ind. Sch. Dist.)	1971	Georgraphic		Plan					

1/ Decree August 29, 1966, p. 2.

* As of April, 1966

Texas Southern District	REACH OF PLAN	NOTICE		MECHANICS FOR EXERCISING CHOICE					NON-RACIAL ASSIGNMENT OF NON-CHOOSERS
	All Grades Covered By	Personal Notice	News-paper Notice	Annual Choice	All Students Must Choose	Second Choice	Officials Not to Influence Choice	Routing of Buses to Accommodate Choice	
* Eastland v. Northeast Houston Ind. Sch. Dist.	1975			X					
* Evans v. Brooks (Texas City Ind. Sch. Dist.)	1972			X					
* Gibbs v. Bd. of Trustees of Port Isabel Ind. Sch. Dist.	1962	General injunction requiring schools to operate on a non-racially discriminatory basis.							
* Hernandex v. Driscoll Consolidated Ind.Sch. Dist.	This case involved Mexican students. It was closed in 1957.								
* Robinson v. Evans (Galveston Ind. Sch. Dist.)	1973			X					
* Ross v. Peterson (Houston Ind. Sch. Dist.)	1967			X					
* Sampson v. Aldine Ind. Sch. Dist.	1967	Geographic Plan.							
* Thomas v. Bowen (Bryan Ind. Sch. Dist.)	1975			X					
* Washington v. A. & M. Ind. Consolidated Sch. Dist.	1967								

* As of April, 1966

TEXAS Eastern District	REACH OF PLAN	NOTICE		MECHANICS FOR EXERCISING CHOICE					NON-RACIAL ASSIGNMENT OF NON-CHOOSERS
	All Grades Covered By	Personal Notice	Newspaper Notice	Annual Choice	All Students Must Choose	Second Choice	Officials Not to Influence Choice	Routing of Buses to Accommodate Choice	
Adams v. Mathews (Longview Ind. Sch. Dist.)	1967	x	x	x			x	x	
*Brown v. Hendrix (Beaumont Ind. Sch. Dist.)	1974			x					
*Price v. Denison Ind. Sch. Dist.	1967	x	x	x			x	x	
*Richard v. Christ (Hamshire-Fannett Ind. Sch. Dist.	1974			x					
* As of April, 1966									

Texas Western District	REACH OF PLAN	NOTICE		MECHANICS FOR EXERCISING CHOICE					NON-RACIAL ASSIGNMENT OF NON-CHOOSERS
	All Grades Covered By	Personal Notice	Newspaper Notice	Annual Choice	All Students Must Choose	Second Choice	Officials Not to Influence Choice	Routing of Buses to Accommodate Choice	
*Carter v. Hix (Gatesville Ind. Sch. Dist.)	1963	General injunction requiring schools to operate on a non-racially discriminatory basis.							
*McGrue v. Williams (Waco Ind. Sch. Dist.) 1/	1967			X					
*Miller v. Barnes (Georgetown Ind. Sch. Dist.)	1976			X					
1/ Desegregation plan not available.									
* As of April, 1966									

Explanation of Category Headings

CRITERIA FOR DENYING CHOICE

Overcrowding Only:

An "X" signifies that no choice or transfer request can be denied for any reason other than overcrowding.

In Case of Overcrowding, Proximity Only:

An "X" signifies that once it is determined that granting all choices would cause overcrowding, the only criteria for determining which choices should be rejected is the comparative proximity of students' homes to the school -- choices of students living farthest from the school would be rejected. No plan based on initial racial assignment and subsequent right of transfer can be marked in this column, for all such plans involve a preference for students already attending the school.

Pupil Placement Criteria:

This column applies only to transfer plans. An "X" signifies that transfer applications may be denied by the School Board for such criteria as the desire or wishes of the pupil or his parents, the pupil's scholastic record, ability and aptitude, and his expected compatibility in the school to which he has requested transfer.

Unlike most columns in the chart, a mark in this column signifies what we consider to be a negative element of the plan.

"Comparable School" Provision:

An "X" signifies the inclusion of a provision substantially as follows:

> "In the event a transfer is requested to a particular school, but it develops that there is available space in another school in all respects comparable to the one to which transfer is requested, closer to the applicant's residence, the School Board may, if it deems it advisable, make the transfer to the comparable school closest to the pupil's residence, rather than to the school to which the transfer was requested."

It is not clear whether the racial composition of schools is considered in determining whether one school is comparable to another.

SPECIAL TRANSFERS

To Take Courses Not Available:

An "X" signifies provision for a right to transfer, applicable to all grades, in order to take a course which is not offered at the school to which the student has been assigned. This column does not differentiate a transfer right which is absolute from a transfer right which may, in the discretion of the School Board, be denied.

Newly Enrolled Students:

An "X" signifies that any student newly enrolling in the school system is given either a free choice of all schools, or is initially assigned by race and then given a right to transfer to an integrated school.

Students Who Move:

An "X" signifies that a student already enrolled in the school system who changes his residence within the area served by the school system, is given either a free choice of all schools, or is initially assigned by race to a new school and then given a right to transfer to an integrated school.

Singleton Transfer Rule:

An "X" signifies that any student in a grade not yet desegregated has an absolute right to transfer to an integrated school. Inclusion of the Singleton transfer rule in a plan obviates the need for other forms of special transfer rules.

ALABAMA Northern District	CRITERIA FOR DENYING CHOICE				SPECIAL TRANSFERS			
	Overcrowding Only	In Case of Overcrowding, Proximity Only	Pupil Placement Criteria	"Comparable School" Provision	To Take Courses Not Available	Newly Enrolled Students	Students Who Move	Singleton Transfer Rule
Armstrong v. Bd. of Ed. of Birmingham						X 1/		
Bennett v. Madison Co. Alabama Bd. of Ed.		X	X					
Boykins v. Fairfield Bd. of Ed.						X		
Brown v. City Bd. of Ed. of Bessemer						X		
Hereford v. City of Huntsville, Ala. Bd. of Ed.		X 2/				X 1/		
Hutton v. Lee (Greene Co.)	X	X						

1/ On same time schedule as for whole plan.

2/ And "all other relevant factors."

ALABAMA Northern District	CRITERIA FOR DENYING CHOICE				SPECIAL TRANSFERS			
	Over-crowding Only	In Case of Overcrowding, Proximity Only	Pupil Placement Criteria	"Comparable School" Provision	To Take Courses Not Available	Newly Enrolled Students	Students Who Move	Singleton Transfer Rule
Miller v. Bd. of Ed. of Gadsden, Alabama								
Stout v. Jefferson Co., Bd. of Ed.						X		

ALABAMA

Middle District

	CRITERIA FOR DENYING CHOICE				SPECIAL TRANSFERS			
	Over-crowding Only	In Case of Overcrowding, Proximity Only	Pupil Placement Criteria	"Comparable School" Provision	To Take Courses Not Available	Newly Enrolled Students	Students Who Move	Singleton Transfer Rule
Carr v. Montgomery Co. School Board	X	X			X	X	X	X
Harris v. Bullock Co. Bd. of Ed.	X	X						
Harris, et al v. Crenshaw Co. Bd. of Ed	X	X				X		
Lee v. Macon Co. Bd. of Ed	X	X						
U.S. v. Lowndes Co. Bd. of Ed	X	X				X		

ALABAMA Southern District	CRITERIA FOR DENYING CHOICE				SPECIAL TRANSFERS			
	Over-crowding Only	In Case of Overcrowding, Proximity Only	Pupil Placement Criteria	"Comparable School" Provision	To Take Courses Not Available	Newly Enrolled Students	Students Who Move	Singleton Transfer Rule
*Brown v. Bd. of Ed. of City of Demopolis	Suit filed August 13, 1965. No court approved desegregation plan.							
*Davis v. Bd. of Commissioners of Mobile County	1960 Geographic Plan with First Graders having a choice of the school in their district or the nearest school formerly attended exclusively by their race.							
U.S. v. Choctaw Co. Bd. of Ed. et al.	X 1/					X	X	
U.S. v. Hale Co. Bd. of Ed. et al.	X	X				X		
U.S. v. Perry Co. Bd. of Ed. et al.	X	X				X		
U.S. v. Wilcox Co. Bd. of Ed. et al.	X 2/	X						

1/ "No choice will be denied for any reason."

2/ "...no choice shall be denied except for good and sufficient reasons related to the administration of the school system such as oversubscription beyond the physical capacity of a given school...." Court order 8/31/66.

*As of April, 1966

FLORIDA Northern District	CRITERIA FOR DENYING CHOICE				SPECIAL TRANSFERS			
	Over-crowding Only	In Case of Overcrowding, Proximity Only	Pupil Placement Criteria	"Comparable School" Provision	To Take Courses Not Available	Newly Enrolled Students	Students Who Move	Singleton Transfer Rule
*Augustus v. Bd. of Pub. Inst. Escambia County			x			x		
Steele v. Bd. of Pub. Inst. Leon County						x		
*Wright v. Bd. of Pub. Inst. Alachua County		x	x			x		
Youngblood v. Bd. of Pub. Inst. Bay County			x					x[1/]

1/ As to certain limitation as to proximity; applicable to 115 named students only. Court order 9/15/66.

*As of April, 1966

FLORIDA Middle District	CRITERIA FOR DENYING CHOICE				SPECIAL TRANSFERS			
	Over-crowding Only	In Case of Overcrowding, Proximity Only	Pupil Placement Criteria	"Comparable School" Provision	To Take Courses Not Available	Newly Enrolled Students	Students Who Move	Singleton Transfer Rule
Blalock v. Bd. of Publ Inst. Lee County								
***Bradley v. Belot Pub. Inst. Pinellas County**		Geographic Plan						
***Braxton v. Bd. of Pub. Inst. Duval County**		Geographic Plan						
***Ellis v. Bd. of Pub. Inst. Orange County**		x			x			
***Harvest v. Bd. of Pub. Inst. Manatee County**		x						
***Lawson v. Bd. of Pub. Inst. Suwanne County**	This suit was filed January 25, 1965. It does not have a Court approved desegregation plan.							
***Mannings v. Bd. of Pub. Inst. Hillsborough Co.**		x						
***Mays v. Bd. of Pub. Inst. Sarasota County**								
***Mills v. Bd. of Pub. Inst. Polk County**			x			x		

*As of April, 1965

FLORIDA Middle District	CRITERIA FOR DENYING CHOICE				SPECIAL TRANSFERS			
	Over-crowding Only	In Case of Overcrowding, Proximity Only	Pupil Placement Criteria	"Comparable School" Provision	To Take Courses Not Available	Newly Enrolled Students	Students Who Move	Singleton Transfer Rule
*Scott v. Bd. of Pub. Inst. of St. John's County	This suit was filed April 6, 1962. It does not have a court-approved desegregation plan.							
*Tillman v. Bd. of Pub. Inst. Volusia County						x		
*Weaver v. Bd. of Pub. Inst. Brevard County					x	x		
*Zimmerman v. Bd. of Pub Inst. Columbia County	x					x		

*As of April, 1966

FLORIDA

Southern District

	CRITERIA FOR DENYING CHOICE				SPECIAL TRANSFERS			
	Over-crowding Only	In Case of Overcrowding, Proximity Only	Pupil Placement Criteria	"Comparable School" Provision	To Take Courses Not Available	Newly Enrolled Students	Students Who Move	Singleton Transfer Rule
***Gibson v. Bd. of Pub. Inst. Dade County**			X			X		
***Hall v. Bd. of Pub. Inst. Broward County**			X					
***Holland v. Bd. of Pub. Inst. Palm Beach Co.**			Geographic Plan					
***Major v. Bd. of Pub. Inst. Monroe County**			X					
***Sharpton v. Bd. of Pub. Inst. Indian River Co.**			X		X			

*As of April, 1966

GEORGIA

Northern District

	CRITERIA FOR DENYING CHOICE				SPECIAL TRANSFERS			
	Over-crowding Only	In Case of Overcrowding, Proximity Only	Pupil Placement Criteria	"Comparable School" Provision	To Take Courses Not Available	Newly Enrolled Students	Students Who Move	Singleton Transfer Rule
* **Calhoun v. Latimer (Atlanta)**	X	X			X 1/			

1/ This reason will be considered; no absolute right to transfer for this reason.

As of April, 1966

GEORGIA Middle District	CRITERIA FOR DENYING CHOICE				SPECIAL TRANSFERS			
	Over-crowding Only	In Case of Overcrowding, Proximity Only	Pupil Placement Criteria	"Comparable School" Provision	To Take Courses Not Available	Newly Enrolled Students	Students Who Move	Singleton Transfer Rule
*Bivins v. Bd of Pub. Ed. Orphanage for Bibb Co.	X	X 1/				X		
*Gaines v. Dougherty Co. Bd of Ed.	X	X						
*Harrington v. Colquitt Co. Bd. & City of Moultrie Bd. of Comms.								
*Lockett v. Bd. of Ed. of Muscogee Co. Sch. Dist.								
*Thomie v. Houston Co., Bd. of Ed.	X	X				X		

1/ For high school - transportation also a criteria.

*As of April, 1966

GEORGIA Southern District	CRITERIA FOR DENYING CHOICE				SPECIAL TRANSFERS			
	Over-crowding Only	In Case of Overcrowding, Proximity Only	Pupil Placement Criteria	"Comparable School" Provision	To Take Courses Not Available	Newly Enrolled Students	Students Who Move	Singleton Transfer Rule
* Acree v. Richmond County Bd. of Ed.								
* Gibson v. Glynn County Board of Education	No court-approved desegregation plan.							
Stell v. Savannah-Chatham Co. Bd. of Ed.			X 1/					
Turner v. Goolsby (Taliaferro County)	Suit filed September 10, 1965. No court-approved desegregation plan.							

1/ Proximity, also.

*As of April, 1966

LOUISIANA Eastern District	CRITERIA FOR DENYING CHOICE				SPECIAL TRANSFERS			
	Over-crowding Only	In Case of Overcrowding, Proximity Only	Pupil Placement Criteria	"Comparable School" Provision	To Take Courses Not Available	Newly Enrolled Students	Students Who Move	Singleton Transfer Rule
Banks v. St. James Parish Sch. Bd.	X 1/		X 1/	X				
Boyd v. Pointe Coupee Parish Sch. Bd.	X 1/		X 1/	X				
*Bush v. Orleans Parish Sch. Bd.	Geographic Plan							
*Carter v. Sch. Bd. of West Feliciana Parish	X 1/		X 1/	X				
Charles v. Ascension Parish Sch. Bd.	X 1/		X 1/	X				
*Danbridge v. Jefferson Parish Sch. Bd.			X	X				
*Davis v. East Baton Rouge Sch. Bd.	X 2/		X 2/	X				

1/ Initial assignments on a freedom of choice basis must be made on a first come, first served basis. Pupil placement criteria are used for denying transfers.

2/ Students apply at any school within their district on first come, first served basis. Excess registrants to other schools in district, without regard to race. Placement criteria are used for denying transfers after initial registration. *As of April, 1966

LOUISIANA Eastern District	CRITERIA FOR DENYING CHOICE				SPECIAL TRANSFERS			
	Over-crowding Only	In Case of Overcrowding, Proximity Only	Pupil Placement Criteria	"Comparable School" Provision	To Take Courses Not Available	Newly Enrolled Students	Students Who Move	Singleton Transfer Rule
Dunn v. Livingston Parish Sch. Bd.	X 1/		X 1/	X				
*George v. Davis (East Feliciana Parish)				X 2/				
Hall v. St. Helena Parish Sch. Bd.	X 1/		X 1/	X				
*Harris v. St. John the Baptist Sch. Bd.				X 2/				
*Hill v. Lafourche Parish Sch. Bd.	Suit filed December 13, 1965. Order of March 23, 1966 requiring board to submit plan.							
Jenkins v. City of Bogalusa Sch. Bd.				X 2/				
*Moore v. Washington Parish Sch. Bd.				X 2/				

1/ Initial assignments on a freedom of choice basis must be made on a first come, first served basis. Pupil placement criteria are used for denying transfers.
2/ The other criteria are desires of students and parents, availability of space and of desired course and comparison of age.

*As of April, 1965

LOUISIANA Eastern District	CRITERIA FOR DENYING CHOICE				SPECIAL TRANSFERS			
	Over-crowding Only	In Case of Overcrowding, Proximity Only	Pupil Placement Criteria	"Comparable School" Provision	To Take Courses Not Available	Newly Enrolled Students	Students Who Move	Singleton Transfer Rule
*Moses v. Washington Parish Sch. Bd.				X 1/				
*Redmond v. Terrebonne Parish Sch. Bd.	Suit filed June 1, 1965. Order of March 23, 1966 requiring board to submit plan.							
Smith v. St. Tammany Parish Sch. Bd.	X	X 3/			X	X		X
*Thomas & West Baton Rouge Parish Sch.Bd.	X 2/		X 2/	X				
Williams v. Iverville Parish Sch. Bd.			X	X				
U.S. v. St. Bernard Parish Sch. Bd.	X	X 3/			X	X		
U.S. v. Plaquemines Parish Sch. Bd.	X	X 3/			X	X		

1/ The other criteria are desires of students and parents, availability of space and of desired courses, and comparison of age.

2/ Initial placement on a freedom of choice basis must be made on a first come, first served basis. Pupil placement criteria are used for denying transfers.

3/ Preference may also be given in order to permit siblings to attend the same school, or to permit a child to attend a school where his parent is regularly employed.

*As of April, 1966

LOUISIANA Western District	CRITERIA FOR DENYING CHOICE				SPECIAL TRANSFERS			
	Over-crowding Only	In Case of Overcrowding, Proximity Only	Pupil Placement Criteria	"Comparable School" Provision	To Take Courses Not Available	Newly Enrolled Students	Students Who Move	Singleton Transfer Rule
*Andrews v. City of Monroe				X[1/]		X		
Banks v. Claiborne Parish Sch. Bd.				X[1/]		X		
*Battise v. Acadia Parish Sch. Bd.				X[1/]				
*Boudreaux v. St. Mary Parish Sch. Bd.		X[2/]						
*Celestain v. Vermillion Parish Sch. Bd.	Suit filed April 4, 1966. No court-approved desegregation plan.							
*Conley v. Lake Charles Sch.Bd. & Calcasieu Parish Sch. Bd.				X[1/]				
*Gilbert v. Webster Parish Sch. Bd.				X[1/]		X		

1/ The other criteria are desires of students and parents, availability of space and of desired courses, and comparison of age.

2/ The other criteria are class size, multiple children in family, parental request, special recommendations.

*As of April, 1966

LOUISIANA Western District	CRITERIA FOR DENYING CHOICE				SPECIAL TRANSFERS			
	Over-crowding Only	In Case of Overcrowding, Proximity Only	Pupil Placement Criteria	"Comparable School" Provision	To Take Courses Not Available	Newly Enrolled Students	Students Who Move	Singleton Transfer Rule
*Gordan v. Jeff Davis Parish Sch. Bd.				X[2]				
*Graham v. Evangeline Parish Sch. Bd.				X[2]				
*Henderson v. Iberia Parish Sch. Bd.		X[1]						
Johnson v. Jackson Parish Sch. Bd.				X[2]		X		
Jones v. Caddo Parish Sch. Bd.				X[2]		X		
Lemon v. Bossier Parish Sch. Bd.				X[2]		X		
*Monteilh v. St. Landry Parish Sch. Bd.				X[2]				

1/ The other criteria are class size, multiple children in family, parental request, special recommendations.

2/ The other criteria are desires of students and parents, availability of space and of desired courses, and comparison of age.

*As of April, 1965

LOUISIANA Western District	CRITERIA FOR DENYING CHOICE				SPECIAL TRANSFERS			
	Over-crowding Only	In Case of Overcrowding, Proximity Only	Pupil Placement Criteria	"Comparable School" Provision	To Take Courses Not Available	Newly Enrolled Students	Students Who Move	Singleton Transfer Rule
*Robertson v. Natchitoches Parish Sch. Bd.				X 2/				
Smith v. Concordia Parish Sch. Bd.				X 1/		X		
*Trahan v. Lafayette Parish Sch. Bd.				X 1/				
*Thomas v. St. Martin Parish Sch. Bd		X 2/						
Valley v. Rapides Parish Sch. Bd.				X 2/		X		
*Williams v. Kimbrough (Madison Parish)				X 1/		X		
U.S. v. Bienville Parish Sch. Bd.				X 2/		X		

1/ The other criteria are class size, multiple children in family, parental request, special recommendations.

2/ The other criteria are desires of students and parents, availability of space and of desired courses, and comparison of age.

*As of April, 1966

LOUISIANA Western District	CRITERIA FOR DENYING CHOICE				SPECIAL TRANSFERS			
	Over-crowding Only	In Case of Overcrowding, Proximity Only	Pupil Placement Criteria	"Comparable School" Provision	To Take Courses Not Available	Newly Enrolled Students	Students Who Move	Singleton Transfer Rule
U.S. v. DeSoto Parish Sch. Bd.	Suit filed January 11, 1967. No court-approved desegregation plan.							
U.S. v. Grant Parish Sch. Bd.				X 1/		X		
U.S. v. LaSalle Parish Sch. Bd.				X 1/		X		
U.S. v. Lincoln Parish Sch. Bd.				X 1/		X		
U.S. v. Richland Parish Sch. Bd.				X 1/		X		

1/ The other criteria are desires of students and parents, availability of space and of desired courses, and comparison of age.

MISSISSIPPI Northern District	CRITERIA FOR DENYING CHOICE				SPECIAL TRANSFERS			
	Over-crowding Only	In Case of Overcrowding, Proximity Only	Pupil Placement Criteria	"Comparable School" Provision	To Take Courses Not Available	Newly Enrolled Students	Students Who Move	Singleton Transfer Rule
*Ayers v. Western Line Cons. Sch. District	Suit filed January 11, 1966. No court-approved desegregation plan.							
Baird v. Benton County Board of Education	X	X			X			X
*Bell v. West Point Mun. Sep. Sch. Dist. (Clay Co.)	Suit filed August 13, 1965. No court-approved desegregation plan. District operating under HEW Plan.							
*Cowan v. Bolivar County Board of Education	X	X			X			
*Henry v. Clarksdale Mun. Sep. Sch. District	Geographic Plan							
U.S. v. Aberdeen Mun. Separate Sch. District	X	X			X	X		X

*As of April, 1966

MISSISSIPPI Northern District	CRITERIA FOR DENYING CHOICE				SPECIAL TRANSFERS			
	Over-crowding Only	In Case of Overcrowding, Proximity Only	Pupil Placement Criteria	"Comparable School" Provision	To Take Courses Not Available	Newly Enrolled Students	Students Who Move	Singleton Transfer Rule
U.S. v. Calhoun County Board of Education		X				X	X 2/	X
U.S. v. Carroll Co. Board of Education		X			X	X		X
U.S. v. Corurth Municipal Sep. Sch. District	X	X			X	X		X
U.S. v. Greenwood Municipal Sep. School District		X			X	X		X
U.S. v. Indiana Municipal Sep. School District		X			X	X		X
U.S. v. Inka Special Mun. Sep. Sch. Dis.	X	X				X		X
U.S. v. Leflore Co. Sch. District		X 1/			X	X		X
U.S. v. Louisville Mun. Sep. Sch. District	Suit filed October 3, 1966. No court-ordered desegregation plan.							
U.S. v. Sunflower County Sch. District		X			X	X		X

1/ "Provided that for justifiable administrative reasons other factors not related to race may be considered."

2/ "Or for valid other reasons not related to race."

MISSISSIPPI Northern District	CRITERIA FOR DENYING CHOICE				SPECIAL TRANSFERS			
	Over-crowding Only	In Case of Overcrowding, Proximity Only	Pupil Placement Criteria	"Comparable School" Provision	To Take Courses Not Available	Newly Enrolled Students	Students Who Move	Singleton Transfer Rule
U.S. v. Humphreys County School District								

MISSISSIPPI Southern District	CRITERIA FOR DENYING CHOICE				SPECIAL TRANSFERS			
	Over-crowding Only	In Case of Overcrowding, Proximity Only	Pupil Placement Criteria	"Comparable School" Provision	To Take Courses Not Available	Newly Enrolled Students	Students Who Move	Singleton Transfer Rule
Alexander v. Holmes Co. Board of Education	X	X						
Anderson v. Canton Munic. Sch. District	X	X 1/			X	X		X
Anderson v. Madison Co. Sch. District	X	X 1/			X	X		X
Barnhardt v. Meridian Separate Sch. Dist.	X	X 1/				X		X
Blackwell v. Issaquena Co. Bd. of Ed.						X		X 2/
* Gladney v. Moss Pt. Munic. Sep. School District	X	X						
Hudson v. Leake Co. Sch. Board		X				X		X

1/ "except that for justifiable administrative reasons, other factors unrelated to race may be applied."

2/ Subject to the requirements and criteria applicable equally to all students without regard to race.

*As of April, 1966

MISSISSIPPI

Southern District

	CRITERIA FOR DENYING CHOICE				SPECIAL TRANSFERS			
	Over-crowding Only	In Case of Overcrowding, Proximity Only	Pupil Placement Criteria	"Comparable School" Provision	To Take Courses Not Available	Newly Enrolled Students	Students Who Move	Singleton Transfer Rule
*Killingsworth v. Enterprise Consolidated	X	X				X		X
Lee v. U.S. (Forrest Co.)		X			X			
Mason v. Biloxi Munic. Sep. Sch. District	X	X			X			
Singleton v. Jackson Munic. Sep. Sch. Dist.	X	X			X	X		X 1/
U.S. v. Amite County School District	X	X			X	X		X
U.S. v. Covington Co. School District	X	X						
U.S. v. Hinds County School Bd	Suit filed January 11, 1967.			No court-approved desegregation plan.				

1/ Subject to the requirements and criteria applicable equally to all students without regard to race.

*As of April, 1966

MISSISSIPPI Southern District	CRITERIA FOR DENYING CHOICE				SPECIAL TRANSFERS			
	Over-crowding Only	In Case of Overcrowding, Proximity Only	Pupil Placement Criteria	"Comparable School" Provision	To Take Courses Not Available	Newly Enrolled Students	Students Who Move	Singleton Transfer Rule
U.S. v. Kemper County School Board					X	X		X
U.S. v. Natchez Special Munic. School District	X	X			X	X		X 1/
U.S. v. Neshoba Co. School Dist.	Suit filed. No court-approved desegregation plan.							
U.S. v. North Pike Cons. Sch. District	X	X 2/			X	X		
U.S. v. North Tippah Cons. School District	X	X				X		X
U.S. v. Noxubee County School District		X			X	X		X
U.S. v. Philadelphia Mun. Sep School District	Suit filed August 18, 1966.			No court-approved desegregation plan.				

1/ Subject to the requirements and criteria applicable equally to all students without regard to race.

2/ Except that for justifiable and administrative reasons, other factors unrelated to race may be applied.

MISSISSIPPI

Southern District	CRITERIA FOR DENYING CHOICE				SPECIAL TRANSFERS			
	Over-crowding Only	In Case of Overcrowding, Proximity Only	Pupil Placement Criteria	"Comparable School" Provision	To Take Courses Not Available	Newly Enrolled Students	Students Who Move	Singleton Transfer Rule
U.S. v. South Pike Co. Cons. School District	X	X			X	X		X
U.S. v. Wilkinson Co. School District	X	X			X 1/	X	X	X
U.S. v. Lauderdale County Sch. Dist.	Suit filed August 18, 1966. No court-approved desegregation plan.							

1/ Or in order to attend a school that a relative in the household is attending as a result of the desegregation plan.

TEXAS Northern District	CRITERIA FOR DENYING CHOICE				SPECIAL TRANSFERS			
	Over-crowding Only	In Case of Overcrowding, Proximity Only	Pupil Placement Criteria	"Comparable School" Provision	To Take Courses Not Available	Newly Enrolled Students	Students Who Move	Singleton Transfer Rule
*Avery v. Wichita Falls Ind. Sch. Dist.	This case was closed in 1962 without a desegregation plan.							
*Britton v. Folsom (Dallas Ind. Sch. Dist.)	Georgraphic Plan.							
*Flax v. Potts (Ft. Worth Ind. Sch. Dist.)							x	
*Jackson v. Rawdon (Mansfield Ind. Sch. Dist.)	Order that defendants "...are hereby forever restrained from refusing admission to Mansfield High School to any of the plaintiffs shown to be qualified in all respects for admission" 1/							
*Rainwater v. Smith (Carrollton Ind. Sch. Dist.)	Geographic Plan.							

1/ Decree August 29, 1956, p. 2.

*As of April, 1966

TEXAS Southern District	CRITERIA FOR DENYING CHOICE				SPECIAL TRANSFERS			
	Over-crowding Only	In Case of Overcrowding, Proximity Only	Pupil Placement Criteria	"Comparable School" Provision	To Take Courses Not Available	Newly Enrolled Students	Students Who Move	Singleton Transfer Rule
*Eastland v. Northeast Houston Ind. Sch. Dist.								
*Evans v. Brooks (Texas City Ind. Sch. Dist.)								
*Gibbs v. Bd. of Trustees of Port Isabel Ind. Sch. Dist.	General injunction requiring schools to operate on a non-racially discriminatory basis							
*Hernandez v. Driscoll Consolidated Ind. Sch. Dist.	This case involved Mexican students. It was closed in 1957.							
*Robinson v. Evans (Galveston Ind. Sch. Dist.)								
* Ross v. Peterson (Houston Ind. Sch. Dist.)								
* Sampson v. Aldene Ind. Sch. Dist.	Geographic Plan.							
* Thomas v. Bowen (Bryan Ind. Sch. Dist.)								
* Washington v. A. & M. Ind. Consolidated Sch. Dist.								

As of April, 1966

TEXAS
Eastern District

	CRITERIA FOR DENYING CHOICE				SPECIAL TRANSFERS			
	Over-crowding Only	In Case of Overcrowding, Proximity Only	Pupil Placement Criteria	"Comparable School" Provision	To Take Courses Not Available	Newly Enrolled Students	Students Who Move	Singleton Transfer Rule
Adams v. Mathews (Longview Ind. Sch. Dist.)	x	x				x	x	
*Brown v. Hendrix (Beaumont Ind. Sch. Dist.)						x		
*Price v. Denison (Ind. Sch. Dist.)	x	x						
*Richard v. Christ (Hamshire-Fannett Ind. Sch. Dist.)								

*As of April, 1966

Texas Western District	CRITERIA FOR DENYING CHOICE				SPECIAL TRANSFERS			
	Over-crowding Only	In Case of Overcrowding, Proximity Only	Pupil Placement Criteria	"Comparable School" Provision	To Take Courses Not Available	Newly Enrolled Students	Students Who Move	Singleton Transfer Rule
* Carter v. Hix (Gatesville Ind. Sch. Dist.)	General basis. injunction requiring schools to operate on a non-racially discriminatory							
* McGrue v. Williams (Waco Ind. Sch. Dist.) 1/								
* Miller v. Barnes (Georgetown Ind. Sch. Dist.)								

1/ Desegregation plan not available.

*As of April, 1965

Explanation of Category Headings

FACULTY DESEGREGATION

Faculty Meetings and In-Service Training: An "X" signifies a provision in the plan requiring that faculty meetings and in-service training programs be held and operated on an integrated basis.

Elimination of Race in New Hiring and Assignment:

An "X" signifies a provision barring further racial discrimination in the hiring and assignment of teachers. The column does not differentiate plans which also provide for non-discrimination in dismissals, demotion, retention, or promotion.

Correction of Past Racial Assignment:

An "X" signifies that some provision is made for eliminating past racial assignments of teachers. The column does not differentiate between plans which contain general provisions, and those which set up specific machinery such as filling teaching vacancies from within the system with teachers of the opposite race.

DESEGREGATION OF PROGRAMS, FACILITIES, SERVICES, AND ACTIVITIES

General Provision:

An "X" signifies a general provision barring discrimination in the various activities related to education. These would include parent meetings, locker rooms, waiting periods for athletic eligibility when prior assignment was based on race, graduation ceremonies, choir, and the like.

Transportation:

An "X" signifies that the plan contains a specific requirement that transportation facilities be desegregated.

ALABAMA	FACULTY DESEGREGATION			DESEGREGATION OF PROGRAMS, FACILITIES, SERVICES, AND ACTIVITIES	
Northern District	Faculty Meetings & Inservice Training	Elimination of Race in New Hiring & Assignment	Correction of Past Racial Assignments	General Provision	Transportation
Armstrong v. Bd. of Ed. of Birmingham					
Bennett v. Madison Co. Alabama Bd. of Ed.					
Boykins v. Fairfield Bd. of Ed.					1/
Brown v. City Bd. of Ed. of Bessemer					1/
Hereford v. City of Huntsville, Ala. Bd. of Ed.					
Hutton v. Lee (Greene Co.)		X		X	

1/ No school transportation system.

ALABAMA	FACULTY DESEGREGATION			DESEGREGATION OF PROGRAMS, FACILITIES, SERVICES, AND ACTIVITIES	
Northern District	Faculty Meetings & Inservice Training	Elimination of Race in New Hiring & Assignment	Correction of Past Racial Assignments	General Provision	Transportation
Miller v. Bd. of Ed. of Gadsdeh, Alabama					
Stout v. Jefferson Co., Bd. of Ed.					

ALABAMA	FACULTY DESEGREGATION			DESEGREGATION OF PROGRAMS, FACILITIES, SERVICES, AND ACTIVITIES	
Middle District	Faculty Meetings & Inservice Training	Elimination of Race in New Hiring & Assignment	Correction of Past Racial Assignments	General Provision	Transportation
Carr v. Montgomery Co. School Board		X	X	X	X
Harris v. Bullock Co. Bd. of Ed.		X	X	X	X
Harris, et al. v. Crenshaw Co. Bd. of Ed.		X	X	X	X
Lee v. Macon Co. Bd. of Ed.		X	X	X	X
U.S. v. Lowndes Co. Bd. of Ed.		X	X	X	X

ALABAMA	FACULTY DESEGREGATION			DESEGREGATION OF PROGRAMS, FACILITIES, SERVICES, AND ACTIVITIES	
Southern District	Faculty Meetings & Inservice Training	Elimination of Race in New Hiring & Assignment	Correction of Past Racial Assignments	General Provision	Transportation
*Brown v. Bd. of Ed. of City of Demopolis	Suit filed August 13, 1965. No court approved desegregation plan.				
*Davis v. Bd. of Commissioners of Mobile Co.	1960 Geographic Plan with First Graders having a choice of the school in their district or the nearest school formerly attended exclusively by their race.				
U.S. v. Choctaw Co. Bd. of Ed. et al.		X		X	X
U.S. v. Hale Co. Bd. of Ed. et al.		X		X	
U.S. v. Perry Co. Bd. of Ed. et al.		X		X	
U.S. v. Wilcox Co. Bd. of Ed. et al.					

* As of April, 1966

FLORIDA Northern District	FACULTY DESEGREGATION			DESEGREGATION OF PROGRAMS, FACILITIES, SERVICES, AND ACTIVITIES	
	Faculty Meetings & Inservice Training	Elimination of Race in New Hiring & Assignment	Correction of Past Racial Assignments	General Provision	Transportation
Augustus v. Bd. of Pub. Inst. Escambia County					
Steele v. Bd. of Pub. Inst. Leon County					
Wright v. Bd. of Pub. Inst. Alachua County	x			x	x
Youngblood v. Bd. of Pub. Inst. Bay County					
* As of April, 1966					

FLORIDA Middle District	FACULTY DESEGREGATION			DESEGREGATION OF PROGRAMS, FACILITIES, SERVICES, AND ACTIVITIES	
	Faculty Meetings & Inservice Training	Elimination of Race in New Hiring & Assignment	Correction of Past Racial Assignments	General Provision	Transportation
Blalock v. Bd. of Pub. Inst. Lee County *		X			
Bradley v. Belot Pub. Inst. Pinellas County *		Geographic Plan			
Braxton v. Bd. of Pub. Inst. Duval County *		Geographic Plan			
Ellis v. Bd. of Pub. Inst. Orange County *		X		X	
Harvest v. Bd. of Pub. Inst. Manatee County *		X			X
Lawson v. Bd. of Pub. Inst. Suwanne County *	This suit was filed January 25, 1965. It does not have a court approved desegregation plan.				
Mannings v. Bd. of Pub. Inst. Hillsborough Co. *		x		x	
Mays v. Bd. of Pub. Inst. Sarasota County *					
Mills v. Bd. of Pub. Inst. Polk County *					

* As of April, 1966

FLORIDA Middle District	FACULTY DESEGREGATION			DESEGREGATION OF PROGRAMS, FACILITIES, SERVICES, AND ACTIVITIES	
	Faculty Meetings & Inservice Training	Elimination of Race in New Hiring & Assignment	Correction of Past Racial Assignments	General Provision	Transportation
*Scott v. Bd. of Pub. Inst. of St. John's County	This suit was filed April 6, 1962. It does not have a court approved desegregation plan.				
*Tillman v. Bd. of Pub. Inst. Volusia County					
*Weaver v. Bd. of Pub. Inst. Brevard County		x		x	
*Zimmerman v. Bd. of Pub. Inst. Columbia County	x				x
* As of April, 1966					

FLORIDA

Southern District

	FACULTY DESEGREGATION			DESEGREGATION OF PROGRAMS, FACILITIES, SERVICES, AND ACTIVITIES	
	Faculty Meetings & Inservice Training	Elimination of Race in New Hiring & Assignment	Correction of Past Racial Assignments	General Provision	Transportation
*Gibson v. Bd. of Pub. Inst. Dade County					
*Hall v. Bd. of Pub. Inst. Broward County					
*Holland v. Bd. of Pub. Inst. Palm Beach Co.		Geographic Plan			
*Major v. Bd. of Pub. Inst. Monroe County		X		X	
*Sharpton v. Bd. of Pub. Inst. Indian River Co.		X			
* As of April, 1966					

GEORGIA Northern District	FACULTY DESEGREGATION			DESEGREGATION OF PROGRAMS, FACILITIES, SERVICES, AND ACTIVITIES	
	Faculty Meetings & Inservice Training	Elimination of Race in New Hiring & Assignment	Correction of Past Racial Assignments	General Provision	Transportation
*Calhoun v. Latimer (Atlanta)					

* As of April, 1966

GEORGIA Middle District	FACULTY DESEGREGATION			DESEGREGATION OF PROGRAMS, FACILITIES, SERVICES, AND ACTIVITIES	
	Faculty Meetings & Inservice Training	Elimination of Race in New Hiring & Assignment	Correction of Past Racial Assignments	General Provision	Transportation
* Bivins v. Bd. of Pub. Ed. & Orphanage for Bibb Co.					
* Gaines v. Dougherty Co. Bd. of Ed.					
* Harrington v. Colquitt Co. Bd. of Ed. & City of Moultrie Bd. of Commissioners					
* Lockett v. Bd. of Ed. of Muscogee Co. Sch Dist.					
* Themie v. Houston Co. Bd. of Ed.					X

* As of April, 1966

GEORGIA Southern District	FACULTY DESEGREGATION			DESEGREGATION OF PROGRAMS, FACILITIES, SERVICES, AND ACTIVITIES	
	Faculty Meetings & Inservice Training	Elimination of Race in New Hiring & Assignment	Correction of Past Racial Assignments	General Provision	Transportation
*Acree v. Richmond Co. Bd. of Ed.					
*Gibson v. Glynn County Board of Education	No court-approved desegregation plan.				
Stell v. Savannah-Chatham Co. Bd. of Education					
Turner v. Goolsby (Taliaferro Co.)	Suit filed September 10, 1965. No court-approved desegregation plan.				

* As of April, 1966

LOUISIANA Eastern District	FACULTY DESEGREGATION			DESEGREGATION OF PROGRAMS, FACILITIES, SERVICES, AND ACTIVITIES	
	Faculty Meetings & Inservice Training	Elimination of Race in New Hiring & Assignment	Correction of Past Racial Assignments	General Provision	Transportation
Banks v. St. James Parish Sch. Bd.					
Boyd v. Pointe Coupee Parish Sch. Bd.					
* Bush v. Orleans Parish Sch. Bd.	Geographic	Plan			
* Carter v. Sch. Bd. of West Feliciana Parish					
Charles v. Ascension Parish Sch. Bd.					
*Danbridge v. Jefferson Parish Sch. Bd.					
*Davis v. East Baton Rouge Sch. Bd.					X
Dunn v. Livingston Parish Sch. Bd.					
* George v. Davis (East Feliciana Parish)					

* As of April, 1966

LOUISIANA Eastern District	FACULTY DESEGREGATION			DESEGREGATION OF PROGRAMS, FACILITIES, SERVICES, AND ACTIVITIES	
	Faculty Meetings & Inservice Training	Elimination of Race in New Hiring & Assignment	Correction of Past Racial Assignments	General Provision	Transportation
Hall v. St. Helena Parish Sch. Bd.					X
*Harris v. St. John the Baptist Parish Sch. Bd.					
*Hill v. Lafourche Parish Sch. Bd.	Suit filed December 13, 1965. Order of March 23, 1966 requiring board to submit plan.				
Jenkins v. City of Bogalusa Sch. Bd.					
*Moore v. Tangipahoa Parish Sch. Bd					
*Moses v. Washington Parish Sch. Bd.					
*Redmond v. Terrebonne Parish Sch. Bd.	Suit filed June 1, 1965. Order of March 23, 1966 requiring board to submit plan.				
Smith v. St. Tammany Parish Sch. Bd.	X	X	X	X	X
*Thomas & West Baton Rouge Parish Sch. Bd.					

* As of April, 1966

LOUISIANA Eastern District	FACULTY DESEGREGATION			DESEGREGATION OF PROGRAMS, FACILITIES, SERVICES, AND ACTIVITIES	
	Faculty Meetings & Inservice Training	Elimination of Race in New Hiring & Assignment	Correction of Past Racial Assignments	General Provision	Transportation
Williams v. Iberville Parish Sch. Bd.					
U.S. v. St. Bernard Parish Sch. Bd.		X	X	X	X
U.S. v. Plaquemines Parish Sch.Bd.	X	X	X	X	X

LOUISIANA Western District	FACULTY DESEGREGATION			DESEGREGATION OF PROGRAMS, FACILITIES, SERVICES, AND ACTIVITIES	
	Faculty Meetings & Inservice Training	Elimination of Race in New Hiring & Assignment	Correction of Past Racial Assignments	General Provision	Transportation
*Andrews v. City of Monroe					
Banks v. Claiborne Parish Sch. Bd.					
*Battise v. Acadia Parish Sch. Bd.					
*Boudreaux v. St. Mary Parish Sch. Bd.					
*Celestain v. Vermillion Parish Sch. Bd.	Suit filed April 4, 1966. No court-approved desegregation plan.				
*Conley v. Lake Charles Sch.Bd. & Calcasieu Parish Sch. Bd.					
*Gilbert v. Webster Parish Sch. Bd.					
*Gordan v. Jeff Davis Parish Sch. Bd.					
*Graham v. Evangeline Parish Sch. Bd.					

* As of April, 1966

LOUISIANA Western District	FACULTY DESEGREGATION			DESEGREGATION OF PROGRAMS, FACILITIES, SERVICES, AND ACTIVITIES	
	Faculty Meetings & Inservice Training	Elimination of Race in New Hiring & Assignment	Correction of Past Racial Assignments	General Provision	Transportation
* Henderson v. Iberia Parish Sch. Bd.					
Johnson v. Jackson Parish Sch. Bd.					
Jones v. Caddo Parish Sch. Bd.					
Lemon v. Bossier Parish Sch. Bd.					
* Monteilh v. St. Landry Parish Sch. Bd.					
* Robertson v. Natchitoches Parish Sch. Bd.					
Smith v. Concordia Parish Sch. Bd.					
* Trahan v. Lafayette Parish Sch. Bd.					
* Thomas v. St. Martin Parish Sch. Bd.					

* As of April, 1966

LOUISIANA

Western Section

	FACULTY DESEGREGATION			DESEGREGATION OF PROGRAMS, FACILITIES, SERVICES, AND ACTIVITIES	
	Faculty Meetings & Inservice Training	Elimination of Race in New Hiring & Assignment	Correction of Past Racial Assignments	General Provision	Transportation
Valley v. Rapids Parish Sch. Bd.					X
***Williams v. Kimbrough (Madison Parish)**					
U.S. v. Bienville Parish Sch. Bd.					
U.S. v. DeSoto Parish Sch. Bd.	Suit filed January 11, 1967. No court-approved desegregation plan.				
U.S. v. Grant Parish Sch. Bd.					
U.S. v. LaSalle Parish Sch. Bd.					
U.S. v. Lincoln Parish Sch. Bd.					
U.S. v. Richland Parish Sch. Bd.					

***** As of April, 1966

MISSISSIPPI
Northern District

	FACULTY DESEGREGATION			DESEGREGATION OF PROGRAMS, FACILITIES, SERVICES, AND ACTIVITIES	
	Faculty Meetings & Inservice Training	Elimination of Race in New Hiring & Assignment	Correction of Past Racial Assignments	General Provision	Transportation
*Ayers v. Western Line Cons. School District	Suit filed January 11, 1966. No court-approved desegregation plan.				
Baird v. Benton County Board of Education	X			X	X
* Bell v. West Point Mun. Sep. Sch.Dis.(Clay Co)	Suit filed August 13, 1965. No court-approved desegregation plan. District operating under HEW Plan.				
* Cowan v. Bolivar County Bd. of Education					X
* Henry v. Clarksdale Mun. Sep. School Dist.		Geographic Plan			
U.S. v. Aberdeen Mun. Sep. School Dist.		X		X	X
U.S. v. Calhoun Co. Bd. of Education	X	X		X	X

* As of April, 1966

MISSISSIPPI Northern District	FACULTY DESEGREGATION			DESEGREGATION OF PROGRAMS, FACILITIES, SERVICES, AND ACTIVITIES	
	Faculty Meetings & Inservice Training	Elimination of Race in New Hiring & Assignment	Correction of Past Racial Assignments	General Provision	Transportation
U.S. v. Carroll Co. Board of Education		X			X
U.S. v. Corinth Mun. Sep. Sch. District		X		X	X
U.S. v. Greenwood Mun. Sep. School District		X		X	X
U.S. v. Indianola Mun. Sep. Sch. Dist.		X		X	X
U.S. v. Iuka Spec. Mun. Sep. School District		X		X	X
U.S. v. Leflore County School District		X			X
U.S. v. Louisville Mun. Sep. School Dist.	Suit filed October 3, 1966. No court-ordered desegregation plan.				

MISSISSIPPI Northern District	FACULTY DESEGREGATION			DESEGREGATION OF PROGRAMS, FACILITIES, SERVICES, AND ACTIVITIES	
	Faculty Meetings & Inservice Training	Elimination of Race in New Hiring & Assignment	Correction of Past Racial Assignments	General Provision	Transportation
U.S. v. Sunflower County School District		X		X	X
U.S. v. Humphreys County School District		X		X	X

MISSISSIPPI Southern District	FACULTY DESEGREGATION			DESEGREGATION OF PROGRAMS, FACILITIES, SERVICES, AND ACTIVITIES	
	Faculty Meetings & Inservice Training	Elimination of Race in New Hiring & Assignment	Correction of Past Racial Assignments	General Provision	Transportation
Alexander v. Holmes Co. Bd. of Ed.					
Anderson v. Canton Munic. Sch. Dist.		X	X	X	X
Anderson v. Madison Co. Sch. District		X	X	X	X
Barnhardt v. Meridian Sep. Sch. Dist.	X	X			X
Blackwell v. Issaquena Co. Bd. of Ed.		X		X	X
* Gladney v. Moss Pt. Munic. Sep. Sch. Dist.					
Hudson v. Leake Co. Sch. Bd.		X			X

* As of April, 1966

MISSISSIPPI Southern District	FACULTY DESEGREGATION			DESEGREGATION OF PROGRAMS, FACILITIES, SERVICES, AND ACTIVITIES	
	Faculty Meetings & Inservice Training	Elimination of Race in New Hiring & Assignment	Correction of Past Racial Assignments	General Provision	Transportation
*Killingsworth v Enterprise Consolidated					X 1/
Lee v. U.S. (Forrest Co.)		X			
Mason v. Biloxi Munic. Sep. Sch District	X	X			
Singleton v. Jackson Munic. Sep. Sch. Dist.	X	X 1/			
U.S. v. Amite County School District		X		X	X
U.S. v. Covington Co. School District		X	X	X	X
U.S. v. Hinds County School Board	Suit filed January 11, 1967. No court-approved desegregation plan.				

1/ Quitman County School District only.

* As of April, 1966

MISSISSIPPI Southern District	FACULTY DESEGREGATION			DESEGREGATION OF PROGRAMS, FACILITIES, SERVICES, AND ACTIVITIES	
	Faculty Meetings & Inservice Training	Elimination of Race in New Hiring & Assignment	Correction of Past Racial Assignments	General Provision	Transportation
U.S. v. Kemper County School Board		X	X 1/	X	X
U.S. v. Natchez Spec. Munic. School. Dist.	X	X		X	X
U.S. v. Neshoba Co. School District	Suit filed. No court-approved desegregation plan.				
U.S. v. North Pike Consolidated Sch. Dis.	X	X		X	X
U.S. v. North Tippah Cons. School Dis.		X		X	X
U.S. v. Noxubee Co. School District		X		X	X
U.S. v. Philadelphia Mun. Sep. Sch. Dist.	Suit filed August 18, 1966. No court-approved desegregation plan.				

1/ If any exists.

MISSISSIPPI
Southern District

	FACULTY DESEGREGATION			DESEGREGATION OF PROGRAMS, FACILITIES, SERVICES, AND ACTIVITIES	
	Faculty Meetings & Inservice Training	Elimination of Race in New Hiring & Assignment	Correction of Past Racial Assignments	General Provision	Transportation
U.S. v. South Pike Co. Cons. School District		X	X	X	X
U.S. v. Wilkinson Co. School Dis.		X		X	X
U.S. v. Lauderdale County Sch. Dist.	Suit filed August 18, 1966. No court-approved desegregation plan.				

TEXAS Northern District	FACULTY DESEGREGATION			DESEGREGATION OF PROGRAMS, FACILITIES, SERVICES, AND ACTIVITIES	
	Faculty Meetings & Inservice Training	Elimination of Race in New Hiring & Assignment	Correction of Past Racial Assignments	General Provision	Transportation
* Avery v. Wichita Falls Ind. Sch. Dist.	This case was closed in 1962 without a desegregation plan.				
* Britton v. Folsom (Dallas Ind. Sch. Dist.)	Georgraphic Plan.				
* Flax v. Potts (Ft. Worth Ind. Sch. Dist.)				x	
* Jackson v. Rawson (Mansfield Ind. Sch. Dist.)	Order that defendants "...are hereby forever restrained from refusing admission to Mansfield High School to any of the plaintiffs shown to be qualified in all respects for admission."1				
* Rainwater v. Smith (Carrollton Ind. Sch. Dist.)	Georgraphic Plan.				

1/ Decree August 29, 1956 p. 2.

* As of April, 1966

TEXAS Southern District	FACULTY DESEGREGATION			DESEGREGATION OF PROGRAMS, FACILITIES, SERVICES, AND ACTIVITIES	
	Faculty Meetings & Inservice Training	Elimination of Race in New Hiring & Assignment	Correction of Past Racial Assignments	General Provision	Transportation
* Eastland v. Northeast Houston Ind. Sch. Dist.					
* Evans v. Brooks (Texas City Ind. Sch. Dist.)					
* Gibbs v. Bd. of Trustees of Port Isabel Ind. Sch. Dist.	General injunction requiring schools to operate on a non-racially discriminatory basis.				
* Hernandez v. Driscoll Consolidated Ind. Sch. Dist.	This case involved Mexican students. It was closed in 1957.				
* Robinson v. Evans (Galveston Ind. Sch. Dist.)					
* Ross v. Peterson (Houston Ind. Sch. Dist.)					
* Sampson v. Aldine Ind. Sch. Dist.	Geographic Plan.				
* Thomas v. Bowen (Bryan Ind. Sch. Dist.)					
* Washington v. A. & M. Ind. Consolidated Sch. Dist.					

* As of April, 1966

TEXAS Eastern District	FACULTY DESEGREGATION			DESEGREGATION OF PROGRAMS, FACILITIES, SERVICES, AND ACTIVITIES	
	Faculty Meetings & Inservice Training	Elimination of Race in New Hiring & Assignment	Correction of Past Racial Assignments	General Provision	Transportation
Adams v Mathews (Longview Ind. Sch. Dist.)	x	x		x	x
* Brown v. Hendrix (Beaumont Ind. Sch. Dist.)					
* Price v. Denison (Ind. Sch. Dist.)		x		x	x
* Richard v. Christ (Hamshire-Fannett Ind. Sch. Dist.)					
* As of April, 1966					

Texas Western District	FACULTY DESEGREGATION			DESEGREGATION OF PROGRAMS, FACILITIES, SERVICES, AND ACTIVITIES	
	Faculty Meetings & Inservice Training	Elimination of Race in New Hiring & Assignment	Correction of Past Racial Assignments	General Provision	Transportation
*Carter v. Hix (Gatesville Ind. Sch. Dist.)	General injunction requiring schools to operate on a non-racially discriminatory basis.				
*McGrue v.Williams (Waco Ind. Sch. Dist.) 1/					
*Miller v. Barnes (Georgetown Ind.) Sch. Dist.)					
1/ Desegregation plan not available.					
* As of April, 1966					

Explanation of Category Headings

EQUALIZING EDUCATIONAL PROGRAMS AND FACILITIES

Closing Inferior Schools:

An "X" signifies that the plan provides for the closing of Negro schools which are so below standard in size and facilities that they cannot be improved to the standard of the community's white schools.

Equalization of Expenditures, Curriculum, or Facilities:

An "X" signifies the inclusion of any provision which looks towards raising any aspect of a Negro school or schools to equivalence with the community's white schools.

Remedial Educational Programs:

An "X" signifies a provision which calls for remedial instructional programs designed to eliminate educational deficiencies in Negro students resulting from their having been taught in years past under inferior educational conditions in racially segregated schools.

PROVISION FOR REPORTING TO COURT

An "X" signifies the inclusion in the plan or in the court order approving the plan of any provision, however limited, requiring the school board to make a report to the district court.

ALABAMA Northern District	EQUALIZING EDUCATIONAL PROGRAMS AND FACILITIES			PROVISION FOR REPORTING TO COURT
	Closing of Inferior Schools	Equalization of Expenditures Curriculum, or Facilities	Remedial Educational Programs	
Armstrong v. Bd. of Ed. of Birmingham				
Bennett v. Madison Co. Alabama Bd. of Ed.				
Boykins v. Fairfield Bd. of Ed.				
Brown v. City Bd. of Ed. of Bessemer				
Hereford v. City of Huntsville, Ala. Bd. of Ed.				
Hutton v. Lee (Green Co,)	X	X		X 1/
1/ As to certain named transfers only. Court order 9/19/66.				

ALABAMA Northern District	EQUALIZING EDUCATIONAL PROGRAMS AND FACILITIES			PROVISION FOR REPORTING TO COURT
	Closing of Inferior Schools	Equalization of Expenditures Curriculum, or Facilities	Remedial Educational Programs	
Miller v. Bd. of Ed. of Gadsden, Alabama				
Stout v. Jefferson Co., Bd. of Ed.				

ALABAMA

Middle District	EQUALIZING EDUCATIONAL PROGRAMS AND FACILITIES			PROVISION FOR REPORTING TO COURT
	Closing of Inferior Schools	Equalization of Expenditures Curriculum, or Facilities	Remedial Educational Programs	
Carr v. Montgomery Co. School Board	X		X	X
Harris v. Bullock Co. Bd. of Ed.	X		X	X
Harris, et al. v. Crenshaw Co. Bd. of Ed.	X	X		X[1/]
Lee v. Macon Co. Bd. of Ed.	X		X	X
U.S. v. Lowndes Co. Bd. of Ed.	X		X	

1/ One specified report on transportation only.

ALABAMA

Southern District

	EQUALIZING EDUCATIONAL PROGRAMS AND FACILITIES			PROVISION FOR REPORTING TO COURT
	Closing of Inferior Schools	Equalization of Expenditures Curriculum, or Facilities	Remedial Educational Programs	
*Brown v. Bd. of Ed. of City of Demopolis		No court approved desegregation plan. Suit filed August 13, 1965.		
*Davis v. Bd. of Commissioners of Mobile Co.	1960 Geographic Plan with First Graders having a choice of the school in their district or the nearest school formerly attended exclusively by their race.			
U.S. v. Choctaw Co. Bd. of Ed. et al.				
U.S. v. Hale Co. Bd. of Ed. et al.	X			
U.S. v. Perry Co. Bd. of Ed. et al.	X			
U.S. v. Wilcox Co. Bd. of Ed. et al.				

* As of April, 1966

FLORIDA Northern District	EQUALIZING EDUCATIONAL PROGRAMS AND FACILITIES			PROVISION FOR REPORTING TO COURT
	Closing of Inferior Schools	Equalization of Expenditures Curriculum, or Facilities	Remedial Educational Programs	
*Augustus v. Bd of Pub. Inst. **Escambia** County				
Steele v. Bd. of Pub. Inst. Leon County				
*Wright v. Bd. of Pub. Inst. **Alachua** County				
Youngblood v. Bd. of Pub. Inst. Bay County				X 1/

1/ As to 115 named students only. Court order 9/15/66.

* As of April, 1966

FLORIDA Middle District	EQUALIZING EDUCATIONAL PROGRAMS AND FACILITIES			PROVISION FOR REPORTING TO COURT
	Closing of Inferior Schools	Equalization of Expenditures Curriculum, or Facilities	Remedial Educational Programs	
Blalock v. Bd. of Pub. Inst. Lee County				
*Bradley v. Belot Pub. Inst. Pinellas County		Geographic Plan		
*Braxton v. Bd. of Pub. Inst. Duval County		Geographic Plan		
*Ellis v. Bd. of Pub. Inst. Orange County				
*Harvest v. Bd. of Pub. Inst. Manatee County				
*Lawson v. Bd. of Pub. Inst. Suwanne County	This suit was filed January 25, 1965. It does not have a Court approved desegregation plan.			
*Mannings v. Bd. of Pub. Inst. Hillsborough Co.				
*Mays v. Bd. of Pub. Inst. Sarasota County				
*Mills v. Bd. of Pub. Inst. Polk County				

* As of April, 1966

FLORIDA Middle District	EQUALIZING EDUCATIONAL PROGRAMS AND FACILITIES			PROVISION FOR REPORTING TO COURT
	Closing of Inferior Schools	Equalization of Expenditures Curriculum, or Facilities	Remedial Educational Programs	
*Scott v. Bd. of Pub. Inst. of St. John's County	This suit was filed April 6, 1962. It does not have a court approved desegregation plan.			
*Tillman v. Bd. of Pub. Inst. Volusia County				
*Weaver v. Bd. of Pub. Inst. Brevard County				
*Zimmerman v. Bd. of Pub. Inst. Columbia County				

* As of April, 1966

FLORIDA

Southern District

	EQUALIZING EDUCATIONAL PROGRAMS AND FACILITIES			PROVISION FOR REPORTING TO COURT
	Closing of Inferior Schools	Equalization of Expenditures Curriculum, or Facilities	Remedial Educational Programs	
*Gibson v. Bd. of Pub. Inst. Dade County				
*Hall v. Bd. of Pub. Inst. Broward County				
*Holland v. Bd. Pub. Inst. Palm Beach Co.		Geographic Plan		
*Major v. Bd. of Pub. Inst. Monroe County				
*Sharpton v. Bd. of Pub. Inst. Indian River Co.				

* As of April, 1966

GEORGIA

Northern District	EQUALIZING EDUCATIONAL PROGRAMS AND FACILITIES			PROVISION FOR REPORTING TO COURT
	Closing of Inferior Schools	Equalization of Expenditures Curriculum, or Facilities	Remedial Educational Programs	
*Calhoun v. Latimer (Atlanta)				

* As of April, 1966

GEORGIA Middle District	EQUALIZING EDUCATIONAL PROGRAMS AND FACILITIES			PROVISION FOR REPORTING TO COURT
	Closing of Inferior Schools	Equalization of Expenditures Curriculum, or Facilities	Remedial Educational Programs	
*Bivins v. Bd. of Pub. Ed. Orphanage for Bibb Co.				
*Gaines v. Dougherty Co. Bd. of Ed.				
*Harrington v. Colquitt Co. Bd. of Ed. & City of Moultrie Bd. of Commissioners				
*Lockett v. Bd. of Ed. of Muscogee Co. Sch. Dist.				
*Thomie v. Houston Co. Bd. of Ed.				

* As of April, 1966

GEORGIA

Southern District	EQUALIZING EDUCATIONAL PROGRAMS AND FACILITIES			PROVISION FOR REPORTING TO COURT
	Closing of Inferior Schools	Equalization of Expenditures Curriculum, or Facilities	Remedial Educational Programs	
*Acree v. Richmond County Bd. of Ed.				
*Gibson v. Glynn County Board of Education	No court-approved desegregation plan.			
Stell v. Savannah Chatham Co. Bd. of Ed.				
Turner v. Goolsby (Taliaferro County)	Suit filed September 10, 1965. No court-approved desegregation plan.			

* As of April, 1966

LOUISIANA Eastern District	EQUALIZING EDUCATIONAL PROGRAMS AND FACILITIES			PROVISION FOR REPORTING TO COURT
	Closing of Inferior Schools	Equalization of Expenditures Curriculum, or Facilities	Remedial Educational Programs	
Banks v. St. James Parish Sch. Bd.				
Boyd v. Pointe Coupee Parish Sch. Bd.				
*Bush v. Orleans Parish Sch. Bd.	Geographic	Plan		
*Carter v. Sch. Bd. of West Feliciana Parish				
Charles V. Ascension Parish Sch. Bd.				
*Danbridge v. Jefferson Parish Sch. Bd.				
*Davis v. East Baton Rouge Sch. Bd.				
Dunn v. Livingston Parish Sch. Bd.				

* As of April 1966

LOUISIANA Eastern District	EQUALIZING EDUCATIONAL PROGRAMS AND FACILITIES			PROVISION FOR REPORTING TO COURT
	Closing of Inferior Schools	Equalization of Expenditures Curriculum, or Facilities	Remedial Educational Programs	
*George v. Davis (East Feliciana Parish)				X 1/
Hall v. St. Helena Parish Sch. Bd.				X 2/
*Harris v. St. John the Baptist Parish Sch. Bd.				
*Hill v. Lafourche Parish Sch.Bd.	Suit filed December 13, 1965		Order of March 23, 1966 requiring board to submit plan.	
Jenkins v. City of Bogalusa Sch. Bd.				X 1/
*Moore v. Tangipahoa Parish Sch. Bd.				X 1/
*Moses v. Washington Parish Sch. Bd.				X 1/
1/ Board to submit to court single system of geographic school districts as dual system of zones is abolished. Combination geographic and transfer plan.				
2/ Bus routing & scheduling plans are to be furnished to the Court as soon as practicable before the commencement of the 1966-67 school year.				

* As of April, 1966

LOUISIANA Eastern District	EQUALIZING EDUCATIONAL PROGRAMS AND FACILITIES			PROVISION FOR REPORTING TO COURT
	Closing of Inferior Schools	Equalization of Expenditures Curriculum, or Facilities	Remedial Educational Programs	
*Redmond v. Terrebonne Parish Sch. Bd.	Suit filed June 1, 1965. Order of March 23, 1966 requiring board to submit plan.			
Smith v. St. Tammany Parish Sch. Bd.	X	X	X	X
*Thomas & West Baton Rouge Parish Sch.Bd.				
Williams v. Iberville Parish Sch. Bd.				
U.S. v. St. Bernard Parish Sch. Bd.		X	X	X
U.S. v. Plaquemines Parish Sch.Bd.		X	X	X

* As of April, 1966

LOUISIANA Western District	EQUALIZING EDUCATIONAL PROGRAMS AND FACILITIES			PROVISION FOR REPORTING TO COURT
	Closing of Inferior Schools	Equalization of Expenditures Curriculum, or Facilities	Remedial Educational Programs	
*Andrews v. City of Monroe				
Banks v. Claiborne Parish Sch. Bd.				
*Battise v. Acadia Parish Sch. Bd.				
*Boudreaux v. St. Mary Parish Sch. Bd.				
*Celestain v. Vermillion Parish Sch. Bd.	Suit filed April 4, 1966. No court-approved desegregation plan.			
*Conley v. Lake Charles Sch. Bd. & Calcasieu Parish Sch. Bd.				
*Gilbert v. Webster Parish Sch. Bd.				
*Gordan v. Jeff Davis Parish Sch. Bd.				
*Graham v. Evangeline Parish Sch. Bd.				

* As of April, 1966

LOUISIANA Western District	EQUALIZING EDUCATIONAL PROGRAMS AND FACILITIES			PROVISION FOR REPORTING TO COURT
	Closing of Inferior Schools	Equalization of Expenditures Curriculum, or Facilities	Remedial Educational Programs	
*Henderson v. Iberia Parish Sch. Bd.				
Johnson v. Jackson Parish Sch. Bd.				
Jones v. Caddo Parish Sch. Bd.				
Lemon v. Bossier Parish Sch. Bd.				
*Monteilh v. St. Landry Parish Sch. Bd.				
*Robertson v. Natchitoches Parish Sch. Bd.				
Smith v. Concordia Parish Sch. Bd.				
*Trahan v. Lafayette Parish Sch. Bd.				
*Thomas v. St. Martin Parish Sch. Bd.				

* As of April, 1966

LOUISIANA Western Section	EQUALIZING EDUCATIONAL PROGRAMS AND FACILITIES			PROVISION FOR REPORTING TO COURT
	Closing of Inferior Schools	Equalization of Expenditures Curriculum, or Facilities	Remedial Educational Programs	
Valley v. Rapides Parish Sch. Bd.				
*Williams v. Kimbrough (Madison Parish)				
U.S. v. Bienville Parish Sch. Bd.				
U.S. v. DeSoto Parish Sch. Bd.	Suit filed January 11, 1967.		No court-approved	desegregation plan.
U.S. v. Grant Parish Sch. Bd.				
U.S. v. LaSalle Parish Sch. Bd.				
U.S. v. Lincoln Parish School Board				
U.S. v. Richland Parish Sch. Bd.				

* As of April, 1966

MISSISSIPPI Northern District	EQUALIZING EDUCATIONAL PROGRAMS AND FACILITIES			PROVISION FOR REPORTING TO COURT
	Closing of Inferior Schools	Equalization of Expenditures Curriculum, or Facilities	Remedial Educational Programs	
Ayers v. Western Line Cons. Sch. District	Suit filed January 11, 1966.		No court-approved desegregation plan.	
Baird v. Benton County Board of Education		X		
Bell v. West Point Mun. Sep. Sch. Dt. (Clay Co)	Suit filed August 13, 1965. District operating under HEW		No court-approved desegregation plan. Plan.	
Cowan v. Bolivar County Board of Education		X		
Henry v. Clarksdale Mun. Sep. School District		Geographic Plan		
U.S. v. Aberdeen Mun. Sep. Sch. District		X	X	X
U.S. v. Calhoun Co. Bd. of Education				X

* As of April, 1966

MISSISSIPPI Northern District	EQUALIZING EDUCATIONAL PROGRAMS AND FACILITIES			PROVISION FOR REPORTING TO COURT
	Closing of Inferior Schools	Equalization of Expenditures Curriculum, or Facilities	Remedial Educational Programs	
U.S. v. Carroll Co. Bd. of Education		X		
U.S. v. Corinth Mun. Sep. Sch. District		X	X	X
U.S. v. Greenwood Mun. Sep. School Dist.				
U.S. v. Indianola Mun. Sep. Sch. Dist.		X		
U.S. v. Iuka Spec. Mun. Sep. Sch. Dist.				X
U.S. v. Leflore Co. School Dist.				
U.S. v. Louisville Mun. Sep. School Dist.	Suit filed October 3, 1966.		No court-ordered desegregation plan.	

MISSISSIPPI Northern District	EQUALIZING EDUCATIONAL PROGRAMS AND FACILITIES			PROVISION FOR REPORTING TO COURT
	Closing of Inferior Schools	Equalization of Expenditures Curriculum, or Facilities	Remedial Educational Programs	
U.S. v. Sunflower Co. Sch. District		X		
U.S. v. Humphreys County School District		X		

MISSISSIPPI Southern District	EQUALIZING EDUCATIONAL PROGRAMS AND FACILITIES			PROVISION FOR REPORTING TO COURT
	Closing of Inferior Schools	Equalization of Expenditures Curriculum, or Facilities	Remedial Educational Programs	
Alexander v. Holmes Co. Bd. of Ed.				
Anderson v. Canton Munic. Sch. District		X	X	
Anderson v. Madison Co. School Dist.		X	X	
Barnhardt v. Meridian Sep. Sch. Dist.				
Blackwell v. Issaquena Co. Bd. of Ed.		X		X
*Gladney v. Moss Pt. Munic. Sep. Sch. Dist				
Hudson v. Leake Co. Sch. Bd.				
* As of April, 1966				

MISSISSIPPI Southern District	EQUALIZING EDUCATIONAL PROGRAMS AND FACILITIES			PROVISION FOR REPORTING TO COURT
	Closing of Inferior Schools	Equalization of Expenditures Curriculum, or Facilities	Remedial Educational Programs	
* Killingsworth v. Enterprise Consolidated				
Lee v. U.S. (Forrest Co.)				
Mason v. Biloxi Munic. Sep. Sch. District				
Singleton v. Jackson Munic. Sep. Sch. Dist.				
U.S. v. Amite County School District		X		X
U.S. v. Covington County Sch. District		X	X	
U.S. v. Hinds County School Board	Suit filed January 11, 1967.		No court-approved desegregation plan.	

* As of April, 1966

MISSISSIPPI Southern District	EQUALIZING EDUCATIONAL PROGRAMS AND FACILITIES			PROVISION FOR REPORTING TO COURT
	Closing of Inferior Schools	Equalization of Expenditures Curriculum, or Facilities	Remedial Educational Programs	
U.S. v. Kemper County School Board	X	X		
U.S. v. Natchez Special Munic. School District				
U.S. v. Neshoba County School District	Suit filed.	No court-approved desegregation plan.		
U.S. v. North Pike Consolidated Sch. District				
U.S. v. North Tippah Cons. Sch. District		X	X	X
U.S. v. Noxubee County School District		X		
U.S. v. Philadelphia Mun. Sep. Sch. Dist.	Suit filed August 18, 1966.		No court-approved	desegregation plan.

MISSISSIPPI Southern District	EQUALIZING EDUCATIONAL PROGRAMS AND FACILITIES			PROVISION FOR REPORTING TO COURT
	Closing of Inferior Schools	Equalization of Expenditures Curriculum, or Facilities	Remedial Educational Programs	
U.S. v. South Pike Co. Cons. School Dist.		X	X	X
U.S. v. Wilkinson Co. School District		X	X	
U.S. v. Lauderdale County Sch. Dist.	Suit filed August 18, 1966. No court-approved desegregation plan.			

TEXAS Northern District	EQUALIZING EDUCATIONAL PROGRAMS AND FACILITIES			PROVISION FOR REPORTING TO COURT
	Closing of Inferior Schools	Equalization of Expenditures Curriculum, or Facilities	Remedial Educational Programs	
*Avery v. Wichita Falls Ind. Sch. Dist.	This case was closed in 1962 without a desegregation plan.			
*Britton v. Folsom (Dallas Ind. Sch. Dist.)	Geographic Plan.			
*Flax v. Potts (Ft. Worth Ind. Sch. Dist.)				
*Jackson v. Rawdon (Mansfield Ind. Sch. Dist.)	Order that defendants "...are hereby forever restrained from refusing admission to Mansfield High School to any of the plaintiffs shown to be qualified in all respects for admission."[1]			
*Rainwater v. Smith (Carrollton Ind. Sch. Dist.)	Georgraphic Plan.			
1/ Decree August 29, 1956, p.2.				
* As of April, 1966				

TEXAS Southern District	EQUALIZING EDUCATIONAL PROGRAMS AND FACILITIES			PROVISION FOR REPORTING TO COURT
	Closing of Inferior Schools	Equalization of Expenditures Curriculum, or Facilities	Remedial Educational Programs	
*Eastland v. Northeast Houston Ind. Sch. Dist.				
*Evans v. Brooks (Texas City Ind. Sch. Dist.)				
*Gibbs v. Bd. of Trustees of Port Isabel Ind. Sch. Dist.	General injunction requiring schools to operate on a non-racially discriminatory basis.			
*Hernandez v. Driscoll Consolidated Ind. Sch. Dist.	This case involved Mexican students. It was closed in 1957.			
* Robinson v. Evans (Galveston Ind. Sch. Dist.)				
* Ross v. Peterson (Houston Ind. Sch. Dist.)				
* Sampson v. Aldine Ind. Sch. Dist.	Geographic Plan.			
* Thomas v. Bowen (Bryan Ind. Sch. Dist.)				
* Washington v. A. & M. Ind. Consolidated Sch. Dist.				

* As of April, 1966

TEXAS Eastern District	EQUALIZING EDUCATIONAL PROGRAMS AND FACILITIES			PROVISION FOR REPORTING TO COURT
	Closing of Inferior Schools	Equalization of Expenditures Curriculum, or Facilities	Remedial Educational Programs	
Adams, v. Mathews (Longview Ind. Sch. Dist.)				
*Brown v. Hendrix (Beaumont Ind. Sch. Dist.)				
*Price v. Denison (Ind. Sch. Dist.)				
*Richard v. Christ (Hamshire-Fannett Ind. Sch. Dist.)				

* As of April, 1966

Texas Western District	EQUALIZING EDUCATIONAL PROGRAMS AND FACILITIES			PROVISION FOR REPORTING TO COURT
	Closing of Inferior Schools	Equalization of Expenditures Curriculum, or Facilities	Remedial Educational Programs	
* Carter v. Hix (Gatesville Ind. Sch. Dist.)	General injunction requiring basis.		schools to operate	n a non-racially discriminat
* McGrue v. Williams (Waco Ind. Sch. Dist.) 1/				
* Miller v. Barnes (Georgetown Ind. Sch. Dist.)				
1/ Desegregation plan not available.				
* As of April, 1966				

IN THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 23,173

JOHNSON, ET AL.
v.
JACKSON PARISH SCHOOL BOARD

No. 23,192

BANKS, ET AL.
v.
CLAIBORNE PARISH SCHOOL BOARD

SUPPLEMENTAL BRIEF OF APPELLEES ON HEW GUIDELINES

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SUPPLEMENTAL BRIEF OF APPELLEES ON HEW GUIDELINES

May it Please the Court:

We have been requested to file a supplemental brief on the question of whether or not the Court should apply HEW guidelines to cases before the Court and to what extent.

The HEW regulation recognizes two methods of action by the School Boards.

(1) A desegregation order of a Federal Court, or,

(2) A voluntary desegregation plan.

In our two cases we have a desegregation order of a Federal Court and under this Judgment the Claiborne and Jackson Parish School Boards are operating under the FREEDOM of CHOICE plan and which is recognized by HEW regulations.

It appears that some of the appellants desire this Court to do away with the Freedom of Choice plan recognized by the HEW and adopt the guidelines solely on a zone method of assigning children to a school and forcing the desegregation of the faculty now.

We submit that the Freedom of Choice plan in our Court Order is the only logical and workable plan that is feasible for our two school systems for the reason, to-wit:

A. Our present plan is working smoothly and efficiently.

B. There is no need for the Court to adopt guidelines of an administrative body whose rules and regulations are constantly changing.

C. District Courts are better qualified to set up a workable plan in its Jurisdiction.

D. This is not the time to desegregate the Faculty.

E. The purpose of the guidelines and the purpose of this suit are not the same.

F. An amendment to the guidelines and the policies of HEW would effect an amendment to this Courts Judgment.

Our Present Plan Is Working Smoothly

At midterm of the 1965-66 school session colored children entered the white schools of Claiborne and

Jackson Parishes on a voluntary basis and WITHOUT PROVOKING ANY INCIDENTS. As far back as five or six years ago, integration in these parishes would have made life impossible for those people charged with that obligation. The twelve years since the original decision handed down by the Supreme Court have NOT been spent altogether in a spirit of dejection, indecision, and hostility toward this decision. Ancient and medieval history teaches us the change in culture and behavior among human beings is a slow process. The renaissance took several hundred years and when the vandals invaded and brought about the deterioration of the Roman Empire, it took almost one thousand years to regain the orderly processes of a worthwhile culture.

Great progress has been made toward changing the attitudes of the citizenship in such a manner that many of them are now accepting integration with reservations, but not with obstruction. There has been a great slow-down in the violence and the wrath that was originally expected with such radical changes. In fact, there has been integration of many schools during the past two years and the writer knows of no single act of violence that has occurred in our schools.

They say that we are not integrating fast enough. It is not evidence before this Court but the fact is that for the beginning of the 1966-67 school session in Claiborne Parish that more than three times as many negro children applied for a transfer than applied the first time. This is more than tripling the original

number in a period of about eight months. If this rate should continue in the same ratio, it would only be a few years until all desired results of the Court Order would be fulfilled, and our schools would not experience the results of such as that of New Rochelle, New York, which is well documented in a recent issue of Life Magazine, and similar experiences in other Northern Cities.

There is no evidence that the Freedom of Choice plan we are operating under is not working and we submit that it is. Both races have amicably accepted the present system and everything is going along fine. Then, Why would it be practical, or reasonable, to change something that is going along quietly and without any violence, and practically everyone is satisfied with?

Since our white people have cooperated in the present plan then we should do nothing to up-set the apple cart.

School districts have been set up in most cases for many years and are usually outlined to satisfy certain neighborhoods attendance wise and assessment wise for the purpose of supporting special taxes for financing capital outlay and also for General Fund purposes. With these new guidelines school administrators would run into such a complexity of problems that their answers will be insolvable.

People living in one district could very easily find

themselves paying taxes to support capital outlay in another district. Once these outstanding obligations have been met by the taxpayers, it would be impossible to have more taxes voted under these new guidelines. There is *no law* existing that *compels* people to vote for taxes.

Further, we believe that the negroes are well satisfied. If they want to attend a white school then they can do so and if they want to stay in a colored school then they can do so. Why then would you force a colored child to do something that he does not want to do?

We submit that the present Court Order under which we are operating is the only fair, workable and plausible plan for this section.

There Is No Need For The Court To Adopt Guidelines Of An Administrative Body Whose Rules and Regulations Are Constantly Changing.

The original guidelines of HEW were in effect at the time our Judgment was rendered by Judge Dawkins. Then a few weeks ago a second set of guidelines, which we refer to as the new guidelines, which they propose to impose on all schools that integrate voluntarily and receive Federal Assistance. These guidelines are impractical from every angle of administration. They propose the sudden mixing of faculties and drawing lines between School Districts and then forcing all children in each district to attend only the

school encompassed by these new divisions. They propose a ratio in all schools not to vary more than Ten per cent from the total population ratio, even though the Civil Rights Act of 1964 says that "desegregation" does not require correction of "Racial imbalance".

In another year the HEW will probably have adopted another set of guidelines and a new set of rules would go into effect and this certainly might not be practical for some schools.

There is no doubt but that the Department of HEW is made up of many people of high educational standards. However, from the looks of the new guidelines, many of these people received their education from the large universities where there is very little opportunity given for practical experience at the elementary and secondary school level.

Harvard University and other universities in that vicinity of the east furnish many of the policy makers inside of HEW. Their qualifications by example and experience are questionable. The state of Massachusetts, for example—a study last year of the Massachusetts Advisory Committee on Racial Imbalance and Education found that most Negro children in Massachusetts attended predominately Negro schools while the overwhelming majority of white children attend schools that are either all-white or have fewer than five non-white children enrolled. Massachusetts is one example, but by no means the most striking one. The problem of de facto segregation, or racial imbalance,

is even more severe in those northern and western states which have a higher percentage of non-white citizens. This program was planned to be enforced against the schools of the South, and evidently very few, if any, Southerners played any part in the framing of these guidelines. The planning of any school program calls for more than education. It calls for educators who should have a rich background of practical experience all the way from kindergarten, elementary, high school, and college levels. There probably would be the diversity of opinions. Any well-thought-out program in education will not show arrogance and determination to force one person's view upon another, but should in conclusion be a program of balanced viewpoints and, foremost, one which will be possible to administer for the betterment of all students involved. Certainly local officials charged with the responsibilities of administration of our school system should have some voice and judgment in the speed and depth of which drastic changes are made and enforced.

District Courts are better qualified to set up a workable plan in its Jurisdiction.

Our Federal District Courts can be depended on to set up a fair, practical and workable plan in its jurisdiction because they know the local conditions and problems involved. We are no longer arguing the merit of segregation or integration. It is now a common sense approach that prevails and that is whether integration can be fully implemented through a reasonable type of program under the direction of the local administra-

tion to the satisfaction and welfare of both the white and colored people of the community.

The Federal District Courts intend to carry out the decision in the Brown case and are in a better position to see that a fair but peaceful plan is put into effect. Our District Judges know that this is something that cannot be accomplished overnight. It is for the best interest of both the colored and white students that the *mixing be gradual, orderly, and peaceful* and both races be educated to the conditions, problems, and tension that accompany such a drastic change.

The writer has seen a school board order the consolidation of two schools on a short notice and without educating the community losing the school as to why the consolidation should take place. In every instant the people rebelled so that the consolidation would be set aside and then the school would take its time and convince the people that this should take place and in due course the transition would be made in an orderly and peaceful manner.

The guidelines of HEW might would get the desired result in one section and not in another. Therefore, we believe, the mechanics which govern the desegregation of a school should be left largely to the Federal District Court in those cases, as here, where a Court Order has been obtained.

This Is Not The Time To Desegregate The Faculty

The District Court deferred any action on the de-

segregation of the faculty to a later date and for good reasons.

White teachers cannot be forced to teach in colored schools and colored teachers cannot be forced to teach in white schools, and this, also, is something that will have to come about by a process of educating the teachers and the public.

Should these new guidelines be implemented in the rural areas of Louisiana, it would cause many of the older and better teachers to retire prematurely. It would make teaching school so undesirable that our most capable young people wishing to enter the field of education would look for other professions. The Southern states are in great need of more of their intelligent young people to enter the profession of education than probably any other section of the nation. The new guidelines would result in the ne'er-do-wells and misfits seeking jobs in this profession. Administrators of long experience and knowhow would retire rather than face the hostility of the courts and the wrath of their fellowman. No person, and school people in particular, can serve several bosses very well at one time and it would bring about the colonization of each race into districts predominately of people of like race and culture.

In Louisiana we have the Teacher's Tenure Act and which is most sacred to both the colored and white teachers and unless it can be shown clearly, and by the prepondance of evidence, that it is for the best in-

terest of the school and teacher, then no teacher may be transferred from one school to another or any change made in the status, or salary, of that teacher.

We know that the best results are obtained in the services rendered by a person who is happy and contented in their work and the students would be the main ones to suffer from having a teacher that was not satisfied and happy in her, or his, work.

In due course, a Freedom of Choice plan should be put in effect for the teachers and if any white teacher wanted to go into a colored school then this could be done or if a colored teacher wanted to go into a white school then this could be done. In this manner, the teacher would certainly make a much better teacher and the students would certainly benefit more than if the teachers are forced in a position that is unsatisfactory and distasteful to them. May we always remember that, in the final analysis, it is in the interest of the student, both colored and white, that we should be most concerned with, rather than how fast our schools are being desegregated in students or faculty.

The Purpose Of The Guidelines and The Purpose Of These Suits Are Not The Same.

The HEW published a regulation to assure the elimination of discrimination in Federal Aid Programs it administers in accordance with Section 601 of Title VI of the Civil Rights Act of 1964. That regulation recognized that a school system would be eligible for

federal funds if it were operating under a Federal Court desegregation order or under a voluntary desegregation plan. The stated purpose of the HEW guidelines is to set forth "the requirements which voluntary desegregation plans must meet for the Commissioner to determine under the HEW regulation that a plan is adequate to accomplish the purposes of Title VI.

From the foregoing, it is apparent that HEW will release federal funds to school systems under a Federal Court desegregation order even though such order may not be identical with the guidelines and voluntary plans submitted thereunder. The guidelines require that a copy of such Court order be submitted to HEW together with an assurance that the school system will comply with the order including any future modification, and it is very aptly pointed out in the guidelines that "a school system under a Court order for desegregation which is not in accord with current judicial standards is subject to legal action by the Department of Justice, or by the parties to the original suit, to modify the order to meet current standards".

Briefly stated, the purpose of the HEW Regulation, guidelines and policies, is to provide that only qualified school systems will be eligible to receive federal financial assistance as specified in the Civil Rights Act of 1964.

Our suit is not concerned with federal aid and its purpose is simply to determine whether the Parish

School System violates rights guaranteed by the Constitution. The stated purpose of the HEW Regulation, guidelines and policies is not to force integration of all school systems but simply to set forth the rules and regulations which must be followed for school systems to qualify for federal financial assistance. It may be suspected that the underlying political reason for the adoption of the Civil Rights Act, the HEW Regulation, guidelines and policies is to force integration of all school systems through an administrative agency. Fortunately, and with good reason, those responsible for drafting the HEW Regulation, guidelines and policies have recognized that if a school system is following a Federal Court desegregation order, it will qualify for federal aid.

An Amendment To The Guidelines and The Policies Of HEW Would Effect An Amendment To This Courts Judgment.

The District Court ordered the Claiborne and Jackson Parish School Boards to submit to the Court a plan for the desegregation of their schools, effective at mid-term. In January 1966, with all deliberate speed until all grades in all schools are included in accordance with requirements set forth by the Fifth Circuit Court of Appeals in the following cases:

1. *Davis v. Board of School Commissioners of Mobile County, Alabama*, 318 F. 2d, 63 (1963).
2. *Armstrong v. Board of Education of the City*

of Birmingham, Justin County, Alabama, 333 F. 2d, 47 (1964).

3. *Davis v. Board of School Commissioners of Mobile County, Alabama*, 333 F. 2d, 53 (1964).
4. *Stell v. Savannah Chatham County Board of Education*, 335 F. 2d, 983 (1964).
5. *Gaines v. Dougherty County Board of Education*, 335 F. 2d, 983 (1964).
6. *Lockett v. Board of Education of Muscogee County School District, Georgia*, 342 F. 2d, 225 (1965).
7. *Singleton v. Jackson Municipal Separate Schools District*, 348 F. 2d, 729 (1965).
8. *Price v. Denison Independent School Board of Education*, 348 F. 2d, 1010 (1965).

The last two of the above cited cases were based partly upon the HEW guidelines issued in April of 1965, as was well known by Attorneys for plaintiffs and defendants at the time of the pre-trial conference held in our case.

Considering the trend of the above cases and in the sincere belief that a workable plan might be devised in line with said cases, defendants decided that they would accept a similar order without the necessity of a formal trial of our case. Therefore, no evidence was taken in our cases, a plan was ordered, later submitted, and a judgment rendered in the District Court in line with the existing HEW guidelines and the other cases following same.

Since the judgment was rendered in the District Court, the Parish School systems have followed, to the best of their ability, and in complete good faith, the mandates contained in said judgment but it is impossible, at this time, to present to this Court evidence of the success of the present integration plan being followed by said Parish School Boards. It would also be improper for this Court to assume that the present integration plan has not been successful.

While this case has been on appeal the new HEW guidelines have been published. For this Court to follow the new HEW guidelines for voluntary plans in this case would be unfair to defendants and would deprive them of the right to produce evidence that the present plan is working and meets all constitutional requirements.

In other cases, it should be apparent that the following of HEW guidelines which will be administratively changed periodically will create unstable judgments that cannot be depended upon in the future by school systems which are, in all good faith, attempting to achieve the same end result.

Another reason that the guidelines should not be blindly followed nor adopted by the Court is based upon Judge Wisdom's statement in *Singleton v. Jackson Municipal Separate School District*, 355 F. 2d, 865 (1966):

> "We consider it important to make clear that although we 'attach great weight to the standards established by the Office of Education', 348 F. 2d,

729, we do not abdicate our judicial responsibility for determining whether a school desegregation plan violates federally guaranteed rights. In this respect we agree with the Eighth Circuit in *Kemp v. Beasley*, 352 F.2d. 14, decided October 7, 1965: 'It is for the Courts and the Courts alone, to determine when the operation of a school system violates rights guaranteed by the Constitution.' ".

Therefore, we submit that it is not desirable for the Federal Court to give weight to and to rely on HEW guidelines and policies in cases before the Court. But in the event this Honorable Court should change the Judgment of the Lower Court that the matter should be remanded to the District Court for the purpose of taking evidence in order that we may submit testimony to prove that the plan under which we are operating now is working smoothly and peaceful and is the most logical, plausible and workable plan for our two school systems.

Respectfully submitted,

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CERTIFICATE

I Certify that a copy of the above Brief has been served by Official United States Mail in accordance with the rules of this Court to each of the Attorneys for the appellants and intervenor as follows:

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Homer, Louisiana, May ____, 1966.

FRED L. JACKSON

B-571, 5-66

DUPLICATED RECORD

IN THE

UNITED STATES

COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 23173

MARGARET M. JOHNSON, ET AL,

Appellants,

versus

JACKSON PARISH SCHOOL BOARD, ET AL,

Appellees.

Appeal from the United States District Court for the Western District of Louisiana

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DESIGNATION OF RECORD

January 20, 1966

(Filed: January 21, 1966)

Clerk
United States Circuit Court of Appeals For
the Fifth Circuit
400 Royal Street
New Orleans, Louisiana

Re: Johnson v. Jackson
Parish School Board
No. 23173

Dear Sir:

I hereby designate that the entire record shall be printed except the following pages:

9	official bid form for bend sale
10,11	cover letters
14-19 inclusive	subpoenas
21,22	minute entries setting hearing
46,52,60, 64,66	cover letters
62	certificate of service
65,67	bond
68	bill

Thank you for your co-operation.

Respectfully yours,

COLLINS, DOUGLAS & ELIE

BY: s/ Harris David

...oOo...

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF LOUISIANA

MONROE DIVISION

ARMEY JOHNSON and
SANDERS THOMAS,

Plaintiffs

vs.

CIVIL ACTION

JACKSON PARISH SCHOOL BOARD,
A Corporation, and DR. A. A.
MEREDITH, President and J.D.
KOONCE, Superintendant,

NO. 11130

Defendants.

COMPLAINT

L. Jurisdiction

Jurisdiction is based on the due process and equal protection clause of the Fourteenth Amendment to the United States Constitution, Title 28 U.S. Code Section 1981, 1983, 1985, 1986, 1988.

2. Nature of Cause of Action

This is a class action on behalf of plaintiffs and all other Negroes similarly situated, for damages and for an Ex Parte Temporary Restraining Order, Preliminary and Final Injunctions prohibiting the furtherance of a proposed School Board Bond Issue until defendants fi with this court a fair and equitable plan for desegregation of the said school district, and for the maintenance of said school system without regard to race, color, creed or national origin, which plan shall be

caused to go into effect no later than the opening of the next session of said school district. All of the other persons constitute a class too numerous to bring before the court. There are common questions of law and fact affecting all members of the class, and common relief is sought.

3. Plaintiffs

Both plaintiffs are adult males, Negroes, citizens of the United States, and the State of Louisiana and are domiciled in the Parish of Jackson.Plaintiffs are registered voters, taxpayers and fathers of children attending the Public Schools of Jackson Parish.

4. Defendants

Defendant, Jackson Parish School Board is a Public Body Corporate organized and existing under the laws of the State of Louisiana, Dr. A. A. Meredith is the President of said School Board and J. D. Koonce is the Superintendent of Jackson Parish Schools. The School Board herein is charged by the laws of the State of Louisiana with the duty of operating systems of free public schools in said parish and they are presently so doing. The said school board is sued in its corporate capacity and the President and Superintendent are sued in their official capacity.

5. Facts

Defendants, acting under color of the laws of Louisiana,

have pursued for some time and are presently pursuing a policy, practice, custom and usage of operating the public school systems in Jackson Parish, Louisiana on a racially segregated basis. Defendants maintain and operate compulsory biracial school systems and defendants make initial assignments of students to the public schools under their control on the grounds of race and color. Principals, teachers and other professional personnel under defendant's jurisdiction are likewise assigned to the schools on the basis of race and color. Students initially assigned to elementary schools designated as "white" are thereafter assigned solely to high schools similarly designated. Students assigned initially to elementary schools denominated as Negro, are thereafter assigned solely to high schools similarly designated. In no case are the assignments of either students, teachers, principals or other professional personnel of the white race made to schools designated as Negro nor are assignments of students, teachers, principals or other personnel of the Negro race assigned to schools designated as white. Defendants also discriminate against plaintiffs herein and the members of the class represented by them in school construction, the formulation of budgets, and the disbursement of school funds. Specifically, defendants construct elementary and high

schools with reference to the maintenance of compulsory biracial school systems. Defendants herein also limit participation in extracurricular activities in the schools to one or the other race, separately.

6. None of the schools in Jackson Parish are integrated. There are 8 white schools with 2,378 white students in grades 1 to 8, and 866 white students in grades 9 to 12. There are 144 white teachers employed in these schools.

7. There are 4 Negro schools with 1,181 Negro students in grades 1 to 8 and 488 Negro students in grades 9 to 12. There are 74 Negro teachers employed in these schools. 1669 493

8. On March 30, 1965 a parish wide school bond issue of $800,000.00 was voted upon and approved by the property owners of said parish. Bids on the bonds are scheduled to be submitted on June 3, 1965. Attached hereto and made part hereof is a preliminary circular concerning said bonds. The bonds are to be issued for the purpose of erecting and/or improving school buildings, school gymnasiums and other related facilities.

9. Plaintiffs apprehend and fear that the funds to be secured by the bond issue will be used to perpetuate the discriminatory segregationist practices of the past.

10. Plaintiffs allege that the Jackson Parish School Board has an affirmative obligation and duty under the Constitution and laws of the United States and decisions thereunder to voluntarily desegregare said schools.

11. Plaintiffs allege that the failure of this school board or any school board to so voluntarily desegreg their schools is a denial of rights guaranteed under the due process and equal protection clauses of the Fourteenth Amendment to the U. S. Constitution and also a violation of 42 U.S.C. 1981, 1983, 1988(3), and 1986.

12. Plaintiffs and the members of the class which they represent are irreparably injured by the acts of defendants complained of herein. The continued operati by defendants of compulsory biracial school systems in the Parish of Jackson, Louisiana including the assignment of pupils, teachers, principals and other administrative personnel on the ground of race, the operation of the budgets for the schools on the basi of race, the construction of schools on the basis of race, and the programming and planning of extracurri cular activities on the basis of race violate the rights, of the plaintiffs and the members of the

class, secured to them by the equal protection clause of the Fourteenth Amendment to the Constitution of the United States and the United States Laws and decisions. This irreparable injury to plaintiffs and their class will continue unless and until defendants are enjoined by this Court. Any other relief to which plaintiffs and those similarly situated might be remitted would be attended by uncertainty and delay, would involve a multiplicity of suits, cause further irreparable injury and occasion vexation and inconvenience and deny to plaintiffs and those similarly situated substantial relief.

WHEREFORE, plaintiffs pray that the court sign an Ex Parte Temporary Restraining Order enjoining defendants, their agents, representatives, employees, successors and all persons in active concert with them from:

1.) Continuing to operate compulsory biracial school systems in the Parish of Jackson.

2.) Making initial assignments of pupils to the public schools of the parish based on race.

3.) Assigning teachers, principals, and other professional personnel to the public schools on the basis of race

4.) Approving employment contracts, budgets, and disbursing funds on the basis of race.

5.) Constructing elementary and high schools in the Parish on the basis of dual attendance areas based on race.

6.) Programming and supporting extracurricular activities which are limited solely to one or the other of the races.

7.) Continuing to make any other distinctions in the operation of the Parish schools which are based solely on race.

8.) Advertising or soliciting for bids, accepting bids, accepting funds, distributing funds, or doing or having done by others any act, furthering the proposed school bond issue approved by the voters on March 30, 1965.

Said Temporary Restraining Order to remain in effect until it expires or until defendants file with the court a fair and equitable plan for desegregation of said school district and maintenance of said desegregated school district which plan shall go into effect no later than the opening of the next school session.

Plaintiffs further pray that the court advance this cause on the docket and order a speedy hearing of this action according to law and after such hearing that this Honorable Court enter Preliminary and Permanent Injunction identical to that prayed for in the Temporary Restraining Order.

Plaintiffs further pray for a judgment against defendants in the sum of $15,000.00 for their damages plus attorneys fees, expenses and costs.

Plaintiffs further pray that if this court directs defendants to submit desegregation plans that the court will retain jurisdiction of this case pending court approval and full and complete implementation of defendants plans.

Plaintiffs further pray that this court will grant such other, further, additional or alternative relief as may appear equitable, just, and proper.

RESPECTFULLY SUBMITTED:

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA
523-5197

BY: s/ Nils R. Douglas

OF COUNSEL:
CARL RACHLIN
38 PARK ROW
NEW YORK 38, NEW YORK
ALVIN J. BRONSTEIN
603 N. FARISH STREET
JACKSON, MISSISSIPPI

STATE OF LOUISIANA

PARISH OF JACKSON

BEFORE ME, the undersigned authority personally came and appeared:

SANDERS THOMAS

who after first being duly sworn did depose and say that he is a plaintiff in the above and foregoing complaint, that he has read the same and that all the allegations ther in contained are true and correct to the best of my informa tion and belief.

s/ Sanders Thomas
SANDERS THOMAS

SWORN TO AND SUBSCRIBED

BEFORE ME THIS 27 DAY OF

MAY, 1965.

s/ Ernest N. Francis, Jr.
N O T A R Y P U B L I C
Com. expires June 1, 1966

(SEAL)

AFFIDAVIT IN SUPPORT OF PRAYER FOR TEMPORARY RESTRAINING ORDER

STATE OF LOUISIANA

PARISH OF JACKSON

BEFORE ME, the undersigned authority personally came and appeared:

SANDERS THOMAS

who after first being duly sworn did depose and say that h

is a Negro citizen of the United States and State of Louisiana, domiciled in the Parish of Jackson; that he is a homeowner, taxpayer and father of a child attending Jackson Parish Public Schools; that all public schools in the Parish are and have been for years operated on a segregated and discriminatory basis; that an $800,000.00 School Bond Issue was approved by the voters of the Parish on March 30, 1965 and that sealed bids are to be made on June 3, 1965; that affiant apprehends and fears that these funds will be used to perpetuate the unlawful, and unconstitutional Bi-Racial school system and that affiant will suffer immediate irreparable harm if the sale of these bonds is not terminated until the school board files a plan of desegregation for the next school session.

s/ Sanders Thomas
SANDERS THOMAS

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 27 DAY OF
MAY, 1965.

s/ Ernest N. Francis, Jr.
N O T A R Y P U B L I C
Com. expires June 1, 1966

(SEAL)

...o0o...

NOTE: Portion of Record Omitted -
Filed in its Original Form

* * * * * * *

...o0o...

AMENDED PETITION

(Number and title omitted) (Filed: June 10, 1965)

Now into court comes Armey Johnson and Sanders Thoma plaintiffs in the above entitled matter and asks leave of court pursuant to rule 15 of the Federal Rules of Civil Pr cedure to amend their petition in the following respects:

1. That the caption of this matter be changed to:

MARGARET M. JOHNSON, LONNIE E. JOHNSON
GLENDA G. JOHNSON, and KENNETH L. JOHNSON
by their father and next friend ARMEY JOHNSON:
AND
CALVIN LEE MARA THOMAS, by his father and
next friend SANDERS THOMAS and all Negro
students and parents similarly situated,

Plaintiffs

vs.

JACKSON PARISH SCHOOL BOARD, A Corporation,
and DR. A. A. MEREDITH, President and J. D.
KOONCE, Superintendent,

Defendants

2. That allegation number 3 of the complaint should read: Infant and adult plaintiffs are Negro citizens of the United States, and of the State

of Louisiana and are domiciled in the Parish of Jackson. Armey Johnson and Sanders Thomas are registered voters, taxpayers and the fathers of children attending the public schools of Jackson Parish. All infant plaintiffs are attending the free, public schools of Jackson Parish, Louisiana. The remainder of the plaintiffs are citizens of the United States and State of Louisiana, Negroes, infants, and adults, similarly situated and constitute a class so numerous as to make it impracticable to bring them all before the court. The rights sought to be enforced for them are several and there is a common question of law and fact affecting the several rights and a common relief is sought.

THEREOF, plaintiffs prays that they be premitted to file this their amended petition.

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA
523-5197
BY: s/ Nils R. Douglas

OF COUNSEL:
CARL RACHLIN
38 PARK ROW
NEW YORK 38, NEW YORK
ALVIN J. BRONSTEIN
603 N.FARISH STREET
JACKSON, MISSISSIPPI

...o0o...

NOTE: Portion of Record Omitted -
Filed in its Original Form

* * * * *

...o0o...

NOTATION FOR SETTING HEARING

Tommy - Judge Dawkins says please notify all counsel that this case is set for trial on application for preliminary injunction July 27, 1965, 9:30 A.M., at Monroe.

You are hereby notified that Judge Ben C. Dawkins, Jr has set the above captioned case for trial on plaintiffs' application for preliminary injunction at Monroe, Louisiana on July 27, 1965 at 9:30 AM.

...o0o...

NOTE: Portion of Record Omitted -
Filed in its Original Form

* * * * * *

...o0o...

ANSWERS AND DEFENSES

(Number and title omitted) (Filed: June 29, 1965)

NOW INTO COURT, through undersigned counsel, comes the JACKSON PARISH SCHOOL BOARD of Jackson Parish, Louisian DR. A. A. MEREDITH and J. D. KOONCE, named as defendants in this action, and who appear hearin for the purpose of filin these defenses and responses.

FIRST DEFENSE

That the Court does not have jurisdiction over the

defendants the Jackson Parish School Board or Dr. A.A. Meredith or J.D. Koonce, Superintendent of Schools for said Board, by virtue of Article 19, Section 26 of the Louisiana Constitution, and Amendment 11 of the United States Constitution.

SECOND DEFENSE

That the plaintiffs' suit is premature since they not only have failed to exhaust all administrative remedies available to them but also they have failed to exhaust any such administrative remedy.

THIRD DEFENSE

That the plaintiffs, Margaret M. Johnson, Lonnie E. Johnson, Glenda G. Johnson and Kenneth L. Johnson, Calvin Lee Mara Thomas, nor their fathers, Armey Johnson and Sanders Thomas have no standing to state a claim upon which relief can be granted, for the following causes and reasons, to-wit:

That until the institution of this suit the defendants did not know the names or identities of any of the plaintiffs and the plaintiffs nor their parents have not at any time made an application for admission, enrollment or transfer to any school other than the ones that the said children now attend and in each instance each of the children, regardless of their race, voluntarily enrolled in the school of their choice and in the school which is nearest to their home.

FOURTH DEFENSE

I.

That the defendants deny the allegations of Paragraph I of the Complaint.

II.

That the defendants aver that Paragraph II of the Complaint states merely conclusions of law and requires no answer as the proposed School Board Bond Issue has been passed and the bonds have been sold and that a portion thereof with regards thereto requires no answer, but because of the implications placed therein, Paragraph II, each and every allegation contained therein are denied and further answering the said Paragraph, the defendants aver that as set forth hereinabove that only five of the plaintiffs are requesting admission and reside in Jackson Parish and there are several hundred colored children in the public schools of said Parish and it is extremely doubtful that the plaintiffs, in reality, do fairly and adequately represent the interest of the class which they seek to represent and particularly since no child, either colored or white has ever made an application for admission or transfer to another school other than the school which they now attend.

III.

That Paragraph III of the Complaint is denied.

IV.

That the allegations contained in Paragraph IV of the Complaint are denied.

V.

That the allegations contained in Paragraph V of the plaintiffs' Complaint are denied. And now further answering Paragraph V of the plaintiffs' Complaint, your defendants deny the allegations contained therein and allege that the defendants maintain and operate the Schools of Jackson Parish for all the children of the said School System, each school being located on a site situated to serve the best interest of the children in the area to be served, with special attention given to transportation.

Defendants have numerous professional personnel who work in schools of both races.

First grade students are registered in a conveniently located school with reference to their domicile.

All students have the privilege of seeking transfers from one school to another, which application proceedures are available to any parent regardless of race.

Defendants deny plaintiffs' allegation that students, principals or other personnel are not assigned to schools designated as white.

The defendants deny any discrimination against the plaintiffs or the members of the alleged class that they are

attempting to represent in school construction, the formation of budgets or the disbursement of school funds. Defendants use well defined guides and policies in all construction without regard to race or color and the said budget is established for each school in the elementary or secondary level depending upon the number of students which are attending. Defendants maintain that the formation of budgets and disbursement of school funds is without discrimination of any type or of any manner. Supplies and equipment are purchased and distributed on a pure and simple allotment basis, being equal for every child in every school at the same grade level.

Prior to the United States Supreme Court decision in the Brown case in 1954, the School Board operated the school system in obedience to and far exceeding the requirements of previous decisions which had established the "separate but equal" doctrine. The program which has been carried on by the School Board has had the exceptional support of the tax payers who have enthusiastically approved and voted taxes upon themselves in every bond election, the last bond election being in 1965 for a total of $800,000.00 The School Board Bond Elections were initiated by the School Board without any pressure placed upon them by any Court, agency or the institution of any type of legal action.

During all building programs the School Board nor its officials have never discriminated against Negroes and in

fact large amounts of the receipts from the bond issues have been used for the securing of newer and better facilities than ones customarily used by white children. The School Board has used the per pupil budget allotment based solely on the grade level of the proposed school, all without discimination against anyone on the basis of race or color.

All of the above described non-discriminatory policies and procedures have been maintained throughout the years. The School Board has unremittingly endeavored to carry out its primary function and objective as it understands it, which is to provide the best possible education and training for all the public school children of Jackson Parish in accordance with need, without regard to race or color.

The same standards for all schools has been established by the School Board, based upon grade levels alone, but based exclusively upon need and without regard to race or color.

VI.

That the allegations contained in Paragraph VI of the plaintiffs' complaint are denied, except that it is admitted that there are eight (8) White schools, with One Thousand, Seven Hundred Fifty Six (1,756) White students in grades one (1) through eight (8) and Eight Hundred Seventy Six (876) White students in grades nine (9) through twelve (12) and that there are One Hundred Thirty Two (132) White teachers employed in these schools.

VII.

Paragraph VII of the plaintiffs' complaint is denied, except that it is admitted that there are four (4) Negro Schools and One Thousand, One Hundred Ninety (1,190) Negro students in grades one (1) through eight (8) and Four Hundred Ninety (490) Negro students in grades nine (9) through twelve (12) with Seventy Six (76) Negro teachers employed in these schools.

1680
4312

VIII.

In answer to Paragraph VIII of the plaintiffs' complaint, it is admitted that on March 30, 1965 a Parish-wide School Board Bond Issue of $800,000.00 was voted upon and approved by the property owners of the Parish and that bids on the bonds were scheduled to be submitted on June 3, 1965 and the bonds were sold on June 3, 1965 and it is further admitted that the bonds were issued for the purchase of improved school facilities in the Parish.

IX.

That the allegations contained in Paragraph IX of the plaintiffs, complaint are denied.

X.

That Article X of the plaintiffs' complaint requires no answer, however, if an answer is required, your defendants allege that they have fulfilled all of their obligations and duties under the Laws of the United States.

XI.

That no answer is required to Paragraph XI. of the plaintiffs' complaint and if an answer is required, the same is denied, except your defendants allege that they comply with and have attempted to comply with all of the Laws of the United States.

XII.

That the allegations contained in Paragraph XII of the plaintiffs' complaint are specifically denied and further answering defendants aver that the plaintiffs do not allege any facts showing what the irreparable injuries are that they claim to be suffering other than the conclusion of law that they "are irreparably injured."

Inasmuch as no child, either white or colored, has ever applied for admission or transfer to a school attended customarily by children of another race, plaintiffs cannot allege or claim that the defendants operate a "compulsory biracial school system" in Jackson Parish, Louisiana.

Your defendants further allege that as the same educational requirements are made by the Board as to qualifications of teachers and principals for all pupils regardless of race or color, (which your defendants allege is the practice of the School Board) the plaintiffs cannot claim that Negro children are being descriminated against in the employment of teachers, principals or school employees. No court having

jurisdiction over the Jackson Parish School Board has ordered or attempted to rule that the School Board must compulsorily integrate teaching or administrative personnel or extracurricular activities. Plaintiffs have failed to allege any facts to show that desegration or integration of personnel is in any way necessary to fully implement the decision of the United States Supreme Court.

XIII.

And now further answering the plaintiffs' complaint, your defendants show that the schools of Jackson Parish have been built and classes conducted therein based on neighborhood and community need, all without discrimination on any basis and particularly on the basis of race or color.

Your defendants allege that in the light of all affirmative allegations made by them in these proceedings, particularly the ones averring that no child has ever applied for admission or transfer to a school attended customarily by children of another race and that the Jackson Parish Schools are maintained on the basis of need rather than on the sole basis of race or color, it would be disruptive to the school system for the Court to order desegration under these facts.

The plaintiffs' demands under the circumstances as shown herein would amount to desegration solely for the sake of desegration only. The plaintiffs children and the

children themselves receive non-discriminatory and good educational instruction facilities and materials.

XIV

Alternatively, if this Honorable Court should find that there is segregation in any of the schools of Jackson Parish, your defendants show that the same is voluntary and is not due to any compulsion by the School Board and is not the result of any State action nor cause of the use of governmental power. Therefore, such segregation (if the same is found to exist), which is denied, it is not illegal and is not subject to injunction by this or any other court, to grant an injunction against something that is voluntary and not compulsory and against defendants who are not compelling the same. The United States Supreme Court case does not command integration, it only condemns compulsory segregation.

Any policy of segregation that may have ever been fostered or declared by any School Board in Louisiana in the base has been superseded and suspended by various subsequent events such as repeals of various former segregation laws by the Louisiana Legislature, the declaring as unconstitutional of various Laws in the various Bush case emanating in New Orleans in the Federal Fifth Circuit Court of Appeals, and the passage of the U.S. Civil Rights Act of 1964.

Thus, under the facts of this case, the granting of an injunction in this cause would be most improper.

XV.

Should this Honorable Court find that there is segregation in the Jackson Parish School System, whether by voluntary action or by custom of the plaintiffs, to such an extent that the Court feels bound to enter some order of judgment in favor of the plaintiffs then and in that event your defendants desire to make the following averments as alternative pleadings.

That your defendants most respectfully but firmly and conscientiously believe and allege that the decision of the United States Supreme Court in the Brown Case is totally erroneous and it was not decided upon legal principles of Law and it should be reexamined by that Court.

That the facts of this case and the operation of the Jackson Parish School System are different and would require a re-examination of the Brown decision in the light of its application to specific facts instead of abstract principles.

FIFTH DEFENSE

That the plaintiffs' complaint fails to state a complaint on which relief can be granted.

WHEREFORE, your defendants pray as follows:

1. That this answer be maintained good and sufficient;

2. That plaintiffs' complaint be dismissed in its

entirety as to all plaintiffs;

3. That alternatively, that the plaintiffs' demands for injunction relief be denied.

4. In the alternative, that if the plaintiffs are entitled to any relief, which is denied, that the Court enter only such order or judgment as is required by law and equity; and that if such order be, that the Jackson Parish School Board should submit a plan or plans for compulsory desegregation of such schools as may be now voluntarily segregated, then, in such event, the defendants be given ample time therefor; and

5. For all full, general and equitable relief.

FRED L. JACKSON, DIST. ATTY.

HAL R. HENDERSON
ASSISTANT DISTRICT ATTORNEY
SECOND JUDICIAL DISTRICT
JACKSON PARISH, LOUISIANA

s/ Hal R. Henderson

WILLIAM H. BAKER
HOLLOWAY & BAKER
SPECIAL COUNSEL
JONESBORO, LA.

s/ William H. Baker

...oOo...

NOTICE BY PLAINTIFF'S THAT ON 7-27-65 AT THE HEARING HEREON THE PLAINTIFF'S WILL MOVE THE COURT PURSUANT TO RULE 36 AND 56 FOR SUMMARY JUDGMENT FOR THE RELIEF DEMANDED IN THE COMPLAINT

(Number and title omitted) (Filed: July 27, 1965)

Sir:

Please take notice pursuant to Rule 36 of the Federal Rules of Civil Procedure that on July 27, 1965 at the hearing hereon the undersigned will move this Court pursuant to said Rule 36 and Rule 56 for summary judgment for the relief demanded in the complaint on the grounds, among others, that the Answer and Defenses herein interposed are insufficient as a matter of law and that you have failed to deny any of the Requests for Admission within the time prescribed therefor.

Yours sincerely,

COLLINS, DOUGLAS & ELIE

BY: s/ Nils R. Doulgas

DATED: July 23, 1965

...oOo...

D E C R E E

(Number and title omitted) (Filed: July 27, 1965)

Pursuant to the pleadings, the law and the evidence:

1. It is ORDERED, ADJUDGED and DECREED that the Jackson Parish School Board, its President, Dr. A.A. Meredith, its Superintendent, J. D. Koonce, their agents, employees,

attorneys, successors in office and all those acting in concert with them are hereby permanently enjoined and restrained from:

a. Continuing to refuse to admit minor plaintiffs to the schools which they would attend if they were white;

b. Continuing to assign students to schools with regard to race or color;

c. Continuing to operate a compulsory bi-racial school system in Jackson Parish, Louisiana;

d. Continuing to maintain dual school zone or attendance area lines based on race or color;

e. Continuing to approve budgets, construction programs, policies, curricula and programs designed to perpetuate, maintain or support a school system operated on a racially segregated basis.

2. It is further ORDERED that, since primary responsibility therefor rests with defendants, they shall prepare and submit to the Court a plan for the desegregation of Jackson Parish schools in accordance with paragraph 1 of this Order beginning with the 1965-1966 school year. This plan shall provide that desegregation will progress with

all deliberate speed until all grades in all schools are included. The speed and manner as to which the schools are desegregated shall be in accordance with the requirements set forth by the Fifth Circuit Court of Appeals in the following cases: Davis v. Board of School Commissioners of Mobile County, Alabama, 318 F. 2d 63 (5 Cir. 1963); Armstrong v. Board of Education of the City of Birmingham, Jefferson County, Alabama 333 F. 2d 47 (5 Cir. 1964); Davis v. Board of School Commissioners of Mobile County, Alabama, 333 F. 2d 53 (5 Cir. 1964); Stell v. Savannah-Chatham County Board of Education, 333 F. 2d 55 (5 Cir. 1964); Gaines v. Dougherty County Board of Education, 334 F. 2d 983 (5 Cir. 1964); Lockett v. Board of Education of Muscogee County School District, Georgia, 342 F. 2d 225 (5 Cir. 1965); Price v. The Denison Independent School District, etc., ____F. 2d ___, No. 21632 (5 Cir. July 2, 1965).

3. Defendants may submit one or more alternate plans and may designate the order of preference assigned by them to the plan or plans. All plans must be submitted within 30 days, after which counsel for plaintiffs will have 15 days to respond.

4. The question of desegregation of teaching and administrative personnel in the Jackson Parish schools will be deferred until the plan for desegregation of pupils, as finally approved, either has been accomplished or has made

substantial progress. Augustus v. Board of Public Instruction of Escambia County, Florida, 306 F. 2d 862 (5 Cir. 1962); Calhoun v. Latimer, 321 F. 2d 302 (5 Cir. 1963); Lockett v. Board of Education of Muscogee County School District, Georgia, 342 F. 2d 225 (5 Cir. 1965); and Bivins v. Board of Public Education, etc., 342 F.2d 229 (5 Cir. 1965).

5. The prayer for relief contained in the complaint with respect to the issuance, sale and delivery of school bonds is hereby dismissed.

6. Jurisdiction of this cause is retained for such further orders as may be necessary, just and proper.

THUS DONE AND SIGNED in open Court at Monroe, Louisiana, this 27th day of July, 1965.

s/ Ben C. Dawkins, Jr.
Chief Judge

Service accepted, citation waived all rights reserved. July 27, 1965.

s/ William H. Baker

Receipt acknowledged of two copies of above decree. July 27, 1965.

s/ Robert F. Collins

...oOo...

MOTION BY DEFENDANTS AND ORDER EXTENDING TIME

(Number and title omitted) (Filed: August 27, 1965)

NOW INTO COURT, through their undersigned counsel, comes the JACKSON PARISH SCHOOL BOARD, DR. A. A. MEREDITH,

President and J. D. KOONCE, Superintendent, defendants in the above styled and captioned case, appearing herein for the purpose of this motion and with respect show and aver:

-1-

That on or about July 22, 1965, in the above styled and captioned cause, your movers herein were ordered by the United States District Court for the Western District of Louisiana, Monroe Division to submit one or more alternate plans of desegregation in compliance with the Court's order within thirty (30) days.

-2-

Your movers further show and aver that since the date of the Order and Decree of the United States District Court for the Western District of Louisiana, Monroe Division, your movers herein have proceeded with the development of such a plan to present to the Court, however, notwithstanding their diligence, your movers herein have been unable to complete the preparation of the plan for its submission to the Court and they are attempting to complete the same with all due diligence.

-3-

Your movers further show and aver that they have had to revise certain proposals by virtue of the decisions that have been handed down by the Federal Courts in order that they comply with the orders of the Court and the interpretatio

of the Laws of the United States of America.

-4-

Your movers therefore show and aver that they do hereby request an extension of time within which to complete their plan as ordered by the Court and request that the Court grant to them an additional period of twenty (20) days for the purpose of completing such plan before submission to this Honorable Court and request that the attached order be signed granting to them the additional time as requested herein.

WHEREFORE, your movers pray, that this Motion be filed, and that considering the entirety thereof, that this Court sign the attached Order granting unto your movers an extension of time with which to complete its plan for submission to the Court.

Further prays for all other orders and decrees necessary and for general and equitable relief.

s/ Fred Jackson
FRED JACKSON
District Attorney
Homer, Louisiana

s/ Hal R. Henderson
HAL R. HENDERSON
Assistant District Attorney
Arcadia, Louisiana

HOLLOWAY & BAKER

BY: s/ William H. Baker
WILLIAM H. BAKER
Special Counsel
Jonesboro, Louisiana

O R D E R

Considering the above and foregoing Motion and upon examining the reasons therefor:

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Jackson Parish School Board, Dr. A.A. Meredith and J.D. Koonce are hereby granted an extension of twenty (20) days before the filing of a desegregation plan in accordance with the Orders of this Court on July 22, 1965.

Thus done and signed in Shreveport on this the 27th day of August, 1965.

s/ Ben C. Dawkins, Jr.
HONORABLE BEN C. DAWKINS
Judge of U.S.District Court for
the Western District of Louisiana

...oOo...

PLAN FOR DESEGREGATION

(Number and title omitted) (Filed: September 16, 1965)

Respondent, Jackson Parish School Board, pursuant to this Court's order of July 27, 1965, presents to the Court a proposed plan for desegregation of the Jackson Parish School System.

The Jackson Parish School Board will, immediately after the approval of the plan herewith submitted, cause to be published for three consecutive weeks in the Jackson Independent, a weekly newspaper, Jonesboro, Louisiana, and on three successive days in the Monroe Morning World, a daily newspaper, Monroe, Louisiana, a notice to persons responsible for

pupils eligible to enter the first, second, eleventh, and twelfth grades,advising said persons that applications for assignment for the first, second, eleventh, and twelfth grades of any school under its jurisdiction may be made in person at the Jackson Parish School Board Office. In addition to the above notices all principals shall be notified to make an announcement to all the school children in their respective schools of the above procedures so that all children who desire to make a transfer to the school of their respective schools of the above procedures so that all children who desire to make a transfer to the school of thier choice may do so.

The following rules and procedures shall be followed:

1. All initial pupil assignments made for the school year 1965-66 are subject to the following provisions:

(a) Application forms for transfers or assignments will be made available, upon request, by the School Board to all students and parents affected, and complete, detailed instructions as to procedures will be furnished with the applications.

(b) Transfers or assignments, when requested, shall not be unreasonably denied. No denial of a request for transfer or assignment shall be based on race or color. However, in determining whether or not a request for transfer or assignment shall be granted,

the School Board, in considering the application for transfer or assignment, may consider the following factors as proper criteria to be applied in granting or denying the request for transfer or assignment:

(1) The desire or wishes of the pupil and his parents or guardian.

(2) The age of the pupil as compared with the ages of pupils already attending the school to which transfer is requested.

(3) The availability of requested or desired courses of study in the school to which the transfer is requested.

(4) Availability of space and other facilities in the school to which the transfer or assignment is requested.

(5) In the event a transfer or assignment is requested to a particular school, but it develops that there is available space in another school, in all respects comparable to the one to which transfer or assignment is requested, closer to the applicant's residence, the School Board may, if it deems it advisable, make the transfer or assignment to the comparable school closest

to the pupil's residence, rather than to the school to which the transfer or assignment was requested.

(6) Any new students, entering the school system for the first time, regardless of grade, shall be entitled to assignment according to their choice to the former all white school or former all Negro school closest to their place of residence,

(7) No request for transfer or assignment may be denied solely on the grounds of technical errors or omissions made by the applicant or his parents or guardian in the preparation of the application for transfer or assignment.

(8) No pupil will be granted more than one transfer in any one school year, except under special cirumstances found justifiable by the School Board.

(c) All pupils requesting transfer or assignment in accordance herewith shall be notified in writing by the School Board of action taken on their requests for transfer or assignment not later than one week after application has been filed.

2. Commencing with the school year 1966-67 all initial assignments of pupils to the first, second, third, fourth, ninth, tenth, eleventh, and twelfth grades in all schools under the supervision and control of the Jackson Parish

School Board shall be made purely and simply on the basis of individual choice, reserving to all pupils, however, the right to apply for transfer in accordance with the procedures hereinabove established, and reserving to the School Board through its authorized representatives, the right to place a pupil in a comparable school other than the school of his choice should there be a comparable school closer to the pupil's residence than is the school of his choice.

3. The method of initial assignment herein provided for will, of course, be subject to all reasonable procedural requirements that may be adopted and promulgated by the Jackson Parish School Board.

4. Nothing contained in this plan shall be construed to prevent the separation of boys and girls in any school or grade, or to prevent the assignment of boys and girls to separate schools.

5. In each succeeding school year this planned desegregation shall progress so that all grades shall be included by September, 1967. Dual school districts on racial lines shall be abolished contemporaneously with the application of this plan to the respective grades when and as reached by the application of this plan.

6. For the school year 1966-67 grades, three, four, nine and ten will be desegregated; for the school year 1967-68

grades five, six, seven, and eight will be desegregated, all in accordance with the terms and provisions of this plan.

7. If any paragraph of these rules and procedures shall be held by any court of competent jurisdiction to be invalid for any reason, the remainder of such rules and procedures shall continue in full force and effect.

RESPECTFULLY SUBMITTED

JACKSON PARISH SCHOOL BOARD

...o0o...

REQUESTED AMENDMENTS TO PLAN FOR DESEGREGATION

(Number and title omitted) (Filed: September 24, 1965)

1. In accordance with the school desegregation plans ordered by the United States District Court for the Eastern District of Louisiana in Jenkins v. City of Bogalusa School Board, Civil Action No. 15,798, and George v. East Feliciana School Board, Civil Action No. 3253 the following means of notification in addition to those suggested by the Jackson Parish School Board is requested:

The Jackson Parish School Board will mail a notice to all prospective first, second, eleventh and twelfth grade students and their parents regardless of race or color, by (specifying a date, within three days of their approval of this plan), advising them that they may submit an applicatio

for the first, second, eleventh and twelfth grades no later than (specify a date three weeks from the date of the Court's approval of this plan), for re-assignment to a school other than that previously assigned. Application forms for such re-assignments will be made available along with the notice by the School Board to all students in grades one, two, eleven and twelve, and complete detailed instructions as to the procedures to be followed in applying for re-assignments will be furnished with the applications.

The above may constitute the first complete paragraph on page two and will obviate the need for paragraph 1a. on page 2.

2. Page 3, section 6 should read:

Any new student entering the school system for the first time, regardless of grade, shall be initially assigned to the school nearest his place of residence. Such student may transfer, in accordance with the procedures set forth in this plan, to the former all white school or former all Negro school closest to his place of residence.

3. Commencing with the school year, 1966-67 all pupils in the first, second, third fourth, ninth, tenth, eleventh, and twelfth grades in all schools under the supervision and control of the Jackson Parish School Board shall be assigned to the School nearest thier places of residence,

reserving to all pupils, however, the right to apply for transfer to the school of their choice in accordance with the procedures hereinabove established, and reserving to the School Board through its authorized representatives, the right to place a pupil in a school, comparable in all respects, other than the school of his choice should there be a school, comparable in all respects, closer to the pupil's residence than is the school of his choice.

4. Add a new paragraph 4 reading:

Any pupil attending a school to which he was originally assigned on the basis of his race, color, or national origin shall have the right, irrespective of whether or not the grade he is attending has been desegregated, to transfer to another school in order to take a course of study for which he is qualified and which is not available in the school he is attending.

Paragraphs 4, 5, 6 and 7 on page 4 should then be numbered 5, 6, 7 and 8 respectively.

5. Add a sentence to page 4, paragraphs 6, reading:

As the dual system is abolished, the board shall present to the court for approval its maps and plans for a single system of geographic school districts.

Respectfully submitted:

COLLINS, DOUGLAS & ELIE
ATTORNEYS FOR PLAINTIFFS
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA

BY: s/ Robert F. Collins

...oOo...

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OBJECTIONS TO PLAN FOR DESEGREGATION

(Number and title omitted) (Filed: October 4, 1965)

The plaintiffs herein file the following objections to the proposed plan for desegregation submitted by the defendants pursuant to the order of the court herein, dated July 27, 1965:

1) The proposed plan denies equal protection of the law, pursuant to the Fourteenth Amendment of the United States Constitution, in that the plaintiffs and all others similarly situated, being Negro citizens of the state of Louisiana and of the United States, parents of children attending schools operated by the defendants are treated differently from white citizens and must request transfer whereas white citizens need not do so.

2) The proposed plan is cumbersome and places obstacles in the way of parents who wish to make application upon the children's behalf to any school previously all white.

First, the request by the parent must be made to the school board for an

application. Secondly, the parent must fill out such application. Thirdly, the parent, must run a hostile gauntlet and file such application. Fourthly, a variety of factors upon which the board may deny the request are set forth, each of which is irrelevant to the decree of the court which ordered the desegregation of schools.

Only Criteria 7 and 8 in the proposed plan have any bearing on the order of desegregation issued by this court. The o thers interfere with the intent of the order of this court and of the Constitution and laws of the United states. By virtue of the Civil Rights Act of 1964, Title IV thereof, all children, regardless of race or color are entitled to attend a desegregated school. Nothing in this plan guarantees that assurance; in fact, to the contrary, the plan is designed to continue parish schools on a segregated basis under the pretense of being desegregated.

3) The proposed plan is inadequate in that it does not set forth in detail a program which will

make certain the schools under its jurisdiction are desegregated. At the very minimum the forms for transfer should be sent to every parent in the parish with a simple explanation of how to affect the transfer of any child and not require all initiative on the parents of Negro children, and none on parents of white children.

4)a) Criteria 1 is designed to permit unnecessary interrogation of the parent and child as to the alleged desire to transfer.

b) Criteria 2 is designed to give the defendant the excuse to reject any particular application for transfer by creating barriers between young children. Children in the same grade level should be in the same grade.

c) Criteria 3 is similarly so. It is the duty of the defendant not to create a system which will perpetuate segregation as Criteria 3 is doing. It is the duty of defendant to provide courses for children and not plans to separate them.

d) Criteria 4 is particularly designed to perpetuate segregation. Unless the children

are permitted to transfer automatically, upon reasonable application being filed, the order of this court is thwarted. If Criteria 4 were permitted to stand there would never be space for the introduction of Negro children into formerly all white schools.

e) With regard to Criteria 5, precisely the same is true. 4 and 5 together constitute a patent effort to prevent the order of this court being put into effect and so deny the rights of the plaintiffs under the Constitution and laws of the United States. Criteria 5 gives the Board too broad a power in light of the history of segregated schools in this parish.

f) Criteria 6 cannot be discussed in full detail except to say it too is designed to prevent desegregation of these schools since the school buildings were constructed with the segregated nature of the housing and residental patterns of the parish in mind and this will merely perpetuate such patterns.

5) All the criteria except 7 and 8 are beyond the power of this board and should be stricken

by the court since they are outside the scope of the order of this court and in violation of such order.

6) Unless a plan is proposed which will provide that the application of a parent on behalf of a child is accepted by a simple mechanical method starting from the proposition that all schools are completely open at this time and there are no seats in schools taken as of this time, the order of the court is thwarted, the United States Constitution and the laws of the United States are denied.

It is therefore respectfully requested that this Honorable Court direct the defendant to submit a new plan which will provide:

I a) that every parent in the parish be immediately given an application setting forth the desire of the parent as to the school he or she wishes his child to attend.

b) Upon receipt of these applications they shall be filed in numerical order, and shall be fulfilled in the same numerical order.

c) It shall be assumed that regardless of distance from the child's home, if the parent applies to a particular school he will make certain

the child is present at such school unless the parish already provides public transportation for such school.

d) Said application shall provide alternative choices which shall be set forth by the parent in such order as the parent requests; providing there is space in said building for said child under the numerical system provided above, the first choice will be accepted; if such choice is filled then the second or third choice shall be granted.

II In the alternative, the board may propose a plan which shall provide that all first grade children attend a particular school in the parish, all second grade children attend another school, and third grade etc., through twelve grades; or further in the alternative the board may propose a alphabetical system which will be administered so as to effectuate desegregation of schools. Thus, the board may propose a plan that all children whose last name begins with "A" in the first grade shall go to a certain school, "B" to another school, etc. Or, thirdly in the alternative the board may propose a different plan which will insure the desegregation of these schools by means not set forth in its own plan or in

any of the proposals of plaintiffs.

Respectfully submitted
for the plaintiffs,

Robert F.Collins,
Nils R. Douglas,
Lolis E. Elie
2211 Dryades Street
New Orleans, Louisiana

Carl Rachlin
38 Park Row
New York, New York

Alvin Bronstein
603 N.Farish Street
Jackson, Mississippi

TO:

Hon. Ben C.Dawkins
U.S. District Judge for
the Western District of
Louisiana, Monroe Division

Hon. Fred Jackson
District Attorney
Homer, Louisiana

Hon. Hal R. Henderson
Asst. District Attorney
Arcadia, Louisiana

Hon. William H. Baker
Special Counsel
Jonesboro, Louisiana

Hon. John Doar, Asst. Attorney General
U.S. Department of Justice
Washington, D.C.

Mr. David Seeley, Office of Education
Dept. of Health, Education & Welfare
Washington, D.C.

...oOo...

ORDER ON PLAN FOR DESEGREGATION

(Number and title omitted) (Filed: October 5, 1965)

Respondent, Jackson Parish School Board, pursuant to this Court's Order of July 27, 1965, has presented to the Court a proposed plan for desegregation of the Jackson Parish School System. The plaintiffs have presented their objections thereto.

Now, after due consideration of the proposed plan submitted by respondent and the objections thereto presented by plaintiffs, and after taking into consideration the local problems inherent in any attempt to desegregate the public schools in Jackson Parish, as well as prior pronouncements of the United States Supreme Court and the United States Court of Appeals for the Fifth Circuit, by which pronouncements this Court is bound:

IT IS ORDERED that the following plan for the orderly desegregation of the schools under the supervision and control of the Jackson Parish School Board be, and it is hereby, approved and adopted:

1. All initial pupil assignments made for the school year 1965-1966 will be considered adequate, subject however to the following transfer provisions:

   (a) The Jackson Parish School Board will, not later than December 1, 1965, mail notices to all students, regardless of race or color,

presently assigned for the school year 1965-1966 to the First, Second, Eleventh and Twelfth grades of any school under its jurisdiction, advising them that they may, from January 3, 1966, to January 7, 1966, apply in person, accompanied by parents or guardian, for transfer and reassignment to another school of their choice.

(b) Such transfers will be made in accordance with the procedures pertaining to transfers currently in general use by the Jackson Parish School Board.

(c) Application forms for transfers or assignments will be made available, upon request, by the School Board to all students and parents affected, and complete, detailed instructions as to procedures will be furnished with the applications.

(d) Transfers or assignments, when requested, shall not be unreasonably denied. No denial of a request for transfer or assignment shall be based on race or color. However, in determining whether or not a request for transfer or assignment shall be granted, the School Board, in considering the application for transfer or assignment, may consider the following factors

as proper criteria to be applied in granting or denying the request for transfer or assignment:

(1) The desire or wishes of the pupil and his parents or guardian.

(2) Availability of space and other facilities in the school to which the transfer or assignment is requested.

(3) The age of the pupil as compared with the ages of pupils already attending the school to which transfer is requested.

(4) The availability of requested or desired courses of study in the school to which the transfer is requested.

(5) In the event a transfer or assignment is requested to a particular school, but it develops that there is available space in another school, in all respects comparable to the one to which transfer or assignment is requested, closer to the applicant's residence, the School Board may, if it deems it advisable, make the transfer or assignment to the comparable school closest to the pupil's residence, rather than to the school to which the transfer or assignment was requested.

(6) No pupil will be granted more than one transfer in any one school year, except

under special circumstances found justifiable by the School Board.

(7) No request for transfer or assignment may be denied solely on the grounds of technical errors or omissions made by the applicant or his parents or guardian in the preparation of the application for transfer or assignment.

(8) Any new students, entering the school system for the first time, regardless of grade, shall be entitled to assignment according to their choice to the former all white school or former all Negro school closest to their place of residence.

(e) All pupils requesting transfer or assignment in accordance herewith shall be notified in writing by the School Board of action taken on their requests for transfer or assignment not later than January 14, 1966, to be effective at mid-term, 1966. If such notification is to the effect that the requested transfer or assignment has been denied, specific reasons for such denial shall be clearly set forth in the notification.

2. Commencing with the school year 1966-67 all initial assignments of pupils to the First, Second, Third, Fourth,

Ninth, Tenth, Eleventh, and Twelfth grades in all schools under the supervision and control of the Jackson Parish School Board shall be made purely and simply on the basis of individual choice, reserving to all pupils, however, the right to apply for transfer in accordance with the procedures hereinabove established, and reserving to the School Board through its authorized representatives, the right to place a pupil in a comparable school other than the school of his choice should there be a comparable school closer to the pupil's residence than is the school of his choice.

3. Commencing with the school year 1967-68, all initial assignments of pupils to all grades in all schools under the supervision and control of the Jackson Parish School Board shall be made purely and simply on the basis of individual choice, reserving to all pupils, however, the right to apply for transfer in accordance with the procedures hereinabove established, and reserving to the School Board through its authorized representatives, the right to place a pupil in a comparable school other than the school of his choice should there be a comparable school closer to the pupil's residence than is the school of his choice.

4. Dual school districts on racial lines shall be abolished contemporaneously with the application of this plan to the respective grades when and as reached by the application

of this plan.

5. The method of initial assignment herein provided for will, of course, be subject to all reasonable procedural requirements that may be adopted and promulgated by the Jackson Parish School Board.

6. Nothing contained in this order shall be construed to prevent the separation of boys and girls in any school or grade, or to prevent the assignment of boys and girls to separate schools.

7. If any paragraph of these rules and procedures shall be held by any court of competent jurisdiction to be invalid for any reason, the remainder of such rules and procedures shall continue in full force and effect.

IT IS FURTHER ORDERED that respondents herein, and their successors in office, their agents, servants, representatives,or employees and, all other persons whomsoever acting in concert with any and all of such persons, are hereby permanently enjoined from doing anything calculated to obstruct or interfere with the orderly administration of this plan for effecting the transition of the schools hereinabove mentioned to a racially non-discriminatory basis.

Jurisdiction of this matter is retained for the entry of any further orders hereafter deemed necessary in the premises.

SIGNED this 5th day of October, 1965, at Shreveport, Louisiana.

s/ Ben C. Dawkins, Jr.

Chief Judge

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NOTE: Portion of Record Omitted - Filed in its Original Form

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NOTICE OF APPEAL

(Number and title omitted) (Filed: November 1, 1965)

Notice is hereby given that the plaintiffs in the above-entitled cause, appeal to the United States Court of Appeals for the Fifth Circuit from those parts of the judgement of this Court on October 5, 1965, that provided for methods of transfer, that provided for pupil assignment on the basis of choice, and from those parts that ignored plaintiffs' objections to the proposed plan of desegregation.

Plaintiffs also appeal from the denail of costs and attorneys' fees.

October 27, 1965.

COLLINS, DOUGLAS & ELIE
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA

BY: s/ Robert F. Collins

...o0o...

CLERK'S CERTIFICATE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

I, ALTON L. CURTIS, Clerk of the United States District Court for the Western District of Louisiana, do hereby certify that the foregoing 68 numbered pages are the entire original District Court Record, which is more clearly described by the paginated notations made in the margin of the certified copy of the Clerk's Docket Sheet, and included therein are the original papers designated by PLAINTIFFS and required by Rule 75(g) FRCP: in a cause entitled:

MARGARET M. JOHNSON, LONNIE E. JOHNSON, GLENDA G. JOHNSON & KENNETH L. JOHNSON, by their Father and next friend ARMY JOHNSON; and CALVIN LEE MARA THOMAS, by his Father & next friend SANDERS THOMAS

VS.

JACKSON PARISH SCHOOL BOARD; DR. A. A. MEREDITH, President; and J. D. KOONCE, Superintendent

No. 11130 on the CIVIL Docket of said Court.

WITNESS my hand and seal of office at the City of Shreveport, Louisiana, on this the 19th of Novembe A.D., 1965.

ALTON L. CURTIS
Clerk, U.S. District Court
Western District of Louisiana

BY s/ Bernadine L. Scorsone
Deputy Clerk (SEAL)

CONTENTS OF THE DESIGNATION OF THE RECORD ON APPEAL

(Number and title omitted) (Filed: November 1, 1965)

Pursuant to Rule 75(a) of the Federal Rules of Civil Procedure, plaintiffs-appellants designate the entire record herein as the record on appeal.

COLLINS, DOUGLAS & ELIE
2211 Dyrades Street
New Orleans, Louisiana

BY: s/ Nils R. Douglas
Attorneys for Plaintiffs-Appellants

OF COUNSEL:

CARL RACHLIN, ESQ.
38 Park Row
New York, New York

ALVIN J. BRONSTEIN, ESQ.
603 North Farish Street
Jackson, Mississippi

HARRIS DAVID, ESQ.
932 Royal Street
New Orleans, Louisiana
October 28, 1965.

...oOo...

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FOR THE FIFTH CIRCUIT

Banks et al
Plaintiffs-Appellants

vs.

NO. 23,192

Claiborne Parish School Board
Defendants-Appellees

Johnson et al
Plaintiffs-Appellants

vs.

NO. 23,173

Jackson Parish School Board
Defendants-Appellees

Andrews
Plaintiffs-Appellants

vs.

NO. 23,253

City of Monroe
Defendants-Appellees

* * * \

Court's desegregation orders, and in the written objections to the proposed plans.

5. The proposed plans in each case provided that:

a. Application forms for transfer to an integrated school were to be made available to the Negro parents and children "upon request", and applicants and their parents were to be required to present themselves or to apply to the School Board "in person".[2]

b. The transfer of Negro students to white schools were to be subject to the following factors:

(1) The desire and wishes of the parents or legal guardians

(2) The age of the pupil as compared with the ages of the pupils in the class or grade to which transfer is requested.

(3) The availability of classroom space in the school to which transfer is requested.

(4) If there is available space in a school which is in all respects comparable to the one which transfer . . . is requested, closer to the applicants' residence," the School Board can transfer the child to the closer school.

(5) The availibility of requested, necessary or desired courses of study in the school to which transfer is requested.[3]

c. Initial assignments of students entering the school system for the first time were to be made on the basis of choice.[4]

6. The District Court's Desegregation Orders are virtually identical.

schools are made available upon request. 5

b. Negro parents and their children must apply in person. 6

c. The transfer of Negro students is subject to the five factors listed in 5 (b) above. 7

d. In succeeding school years, all initial assignments of pupils to all grades in all schools . . . shall be made purely and simply on the basis of individual choice, reserving to all pupils . . . the right to transfer in accordance with the procedure hereinabove established, and reserving to the school board . . . the right to place a pupil in comparable school other than the school of his choice should there be a comparable school closer to the pupils residence than is the school of his choice. 8

e. New students entering the school system for the first time shall be assigned; according to their choice to the former all white or Negro school closest to their place of residence." 9

7. Close similarity in Written Objectives to Proposed Plans of Desegregation.

a. Plaintiffs objected to the Negro parents being required to apply in person to the School Board. 10

b. Plaintiffs objected to the factors listed in 5 (b) above, that the School Board can weigh in deciding whether to transfer a student to predominately white schools."

c. Plaintiffs objected that the plans denied equal protection of the law. 12

8. Plaintiffs, in their written objections, suggested the same alternative desegregation plans to the District Court. 13

9. Plaintiffs-Appellants intend to raise the same legal issues in each appeal.

10. Since the orders appealed from are virtually identical, objections previously filed very similar, and since the factual and legal issues presented upon appeal will be the same, plaintiffs should not be required to process the same appeal three times.

avoid the superfluous time and financial expense that would be involved in three separate appeals.

WHEREFORE plaintiffs-appellants pray that the above cases be consolidated into one appeal, and that they be permitted to file a single brief.

COLLINS, DOUGLAS & ELIS
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA

BY:_____
CARL RACHLIN
38 PARK ROW
NEW YORK, NEW YORK

ALVIN BRONSTEIN
603 N. FARISH STREET
JACKSON, MISSISSIPPI

HARRIS DAVID
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA

ATTORNEYS FOR PLAINTIFFS-APPELLANTS

FOOTNOTES

1. In Johnson v. Jackson Parish School Board, No. 1 Plaintiffs filed a second set of objections to the proposed plans, but they add nothing to the major objectives raised on appeal. They were filed without knowledge that objections had already been filed.

2. See Exhibit 1, p. 1; Exhibit 4, p.2; Exhibit 7, p.2.

3. See Ex. 1, p.2; Ex. 4, p. 2, 3; Ex. 7, p. 2, 3.

4. See Ex. 4, p.3; Ex. 7, p 4.

5. See Ex. 3, p. 3; Ex. 6, p. 2; Ex. 9, p. 2.

6. See Ex. 3, p. 2; Ex. 6, p. 2; Ex. 9, p. 2.

7. See Ex. 3, p. 3, 4; Ex. 6, p. 3, 4; Ex. 9, p. 3, 4.

8. See Ex. 3, p. 5, 6; Ex. 6, p. 6, 7; Ex. 9, p. 6.

9. See Ex. 3, p. 5; Ex. 6, p, 5; Ex. 9, p. 5.

10. See Ex. 2, p. 2; Ex. 5, p. 1; Ex. 8, p. 2.

11. See Ex. 2, p. 2; Ex. r, p. 2. 3; Ex. 8, p. 2, 3.

12. See Ex. 2, p. 3; Ex. 5, p.1; Ex. 8, p. 1.

13. See Ex. 2, p. 34; Ex. 5, p. 4; Ex. 8, p. 4, 5.

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

Banks, et al

Plaintiffs-Appellants

vs. No. 23,192

Claiborne Parish School Board

Defendants-Appellees

Johnson et al

Plaintiffs-Appellants

vs. No. 23,173

Jackson Parish School Board

Defendants-Appellees

Andrews

Plaintiffs-Appellants

vs. No. 23,253

City of Monroe

Defendants-Appellants

* *

O R D E R

Upon consideration of the motion filed herein and it appearing meritorious, it is hereby ordered that the three cases be consolidated into one appeal, and that a single appellate brief may be filed.

_____

J U D G E

Dated:

CERTIFICATE OF SERVICE

I hereby certify that a copy of this motion has been placed in the United States Mail and addressed to Albin P. Lassister, District Attorney, Courthouse Building, Monroe, Louisiana, to Fred L. Jackson, District Attorney, 2nd Judicial District Court, Jonesboro, Louisiana, to Jack P. F. Gremillion, Attorney General State Capitol, Baton Rouge, Louisiana, and to Haynes Harksey, Jr., 1504 Stubbs Avenue, Monroe, Louisiana.

TOWN OF JONESBORO (LOUISIANA) VS. MITCHELL, DANIEL ET AL., 1964
(CORE MEMBERS ARRESTED DURING DEMONSTRATION)

cal Society of Wisconsin

Please Retain Original Order

Box 3
Folder 2

TOWN OF JONESBORO

VS

DANIEL MITCHELL, ET AL

MAYOR'S COURT, TOWN OF JONESBORO

PARISH OF JACKSON

STATE OF LOUISIANA

* * * * * * * * * * * * * * * * * *

MOTION TO QUASH

Now into court through undersigned counsel comes Daniel Mitchell, Will Palmer, Jr., Jimmie C. Leonard, Earlean Knox, Annie P. Johnson, Shirley Potts, Mary E. Potts, Glenn E. Johnson, Maxine Walker and Willie Henderson and having been informed that an affidavit has been filed against them charging that they on July 27, 1964 "...did wilfully, feloniously and maliciously violate Ord. #2 & 329 Disturbing the Peace Causing a scene and failure to move on when told by police officer..." reserving their right to file other special pleadings herein, and protesting that they are not guilty of the offense set out in the charge, move to Quash the said affidavit in its entirety for the following reasons, to-wit:

1. That Ordinances #2 and 329 have several subsections and several ways in which they can be violated, and your defendants do not know under which subsection or in what way they are alleged to have violated the ordinances in that the affidavit against them does not state with particularity, but defendants are only given the following information: "Disturbing the peace causing a scene and failure to move on when told by police officer."

2. The ordinances under which petitioners were charged violates the Due Process and Equal Protection clauses of the Fourteenth Amendment of the Constitution of the United States in that they have for their purpose furthering and maintaining the city's policy of forced segregation in the Town of Jonesboro, or in the alternative, and the alternative only, it is being administered in a fashion so as to deny members of the Negro race of rights secured to them under the Equal Protection and Due Process

Clauses of the Fourteenth Amendment to the Constitution of the United States by exacting of them criminal penalties for seeking to exercise their freedom of speech and of assembly as guaranteed by the First and Fourteenth Amendments to the U.S. Constitution.

3. The ordinances upon which the prosecution is based are so vague and indefinite, as not to establish an ascertainable standard of guilt, in violation of Article 1 Section 10 of the Constitution of the State of Louisiana which guarantees that the accused be informed of the nature of the accusation against him.

4. The arrest and prosecution of defendants is unconstitutional because there was no clear and present danger to a substantial interest of the state to warrant abridgment of defendants' rights to free speech and assembly.

5. The affidavit does nothing more than set forth a conclusion of law.

6. The arrest and prosecution of defendants is in violation of the Constitution of the State of Louisiana, Article 1 Section 3, Freedom of Speech.

7. The arrest and prosecution of defendants is in violation of their rights to free speech guaranteed under the First and Fourteenth Amendments to the Constitution of the United States.

8. The arrest and prosecution of defendants herein violate their rights under the laws of the United States.

9. The ordinances under which defendants are charged are unconstitutional in their application if construed, as here, to proscribe free speech and peaceable assembly while petitioning the government for a redress of grievances.

WHEREFORE, petitioners prays that this motion to quash be sustained and that the affidavit filed herein against them be quashed and that the charges be dismissed and that they be restored to their liberty forthwith and that they be relieved from further prosecution herein under the ordinances complained of, and for all orders necessary and for general and equitable relief.

ATTORNEYS FOR DEFENDANT
COLLINS, DOUGLAS & ELIE
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA

BY: _____

OF COUNSEL:

CARL RACHLIN
38 PARK ROW
NEW YORK 38, NEW YORK

JAMES SHARP, JR.
105 N. 23RD STREET
MONROE, LOUISIANA

MURPHY W. BELL
971 SOUTH 13TH STREET
BATON ROUGE, LOUISIANA

STATE OF LOUISIANA

PARISH OF ORLEANS

BEFORE ME, the undersigned authority, personally came and appeared: ROBERT F. COLLINS, who after being first by me duly sworn said,

That he is one of the attorneys for the petitioners named in the above and foregoing petition; that he has read same and that all of the allegations of facts therein contained are true and correct to the best of his knowledge, information and belief.

_____
ROBERT F. COLLINS

SWORN TO AND SUBSCRIBED
BEFORE ME THIS DAY
OF , 1964.

_____
N O T A R Y P U B L I C

TOWN OF JONESBORO

vs.

DANIEL MITCHELL, ET AL

MAYOR'S COURT, TOWN OF JONESBORO

PARISH OF JACKSON

STATE OF LOUISIANA

* *

APPLICATION FOR BILL OF PARTICULARS

Now into court through undersigned counsel comes Daniel Mitchell, Will Palmer, Jr., Jimmie C. Leonard, Earlean Knox, Annie P. Johnson, Shirley Potts, Mary E. Potts, Glenn E. Johnson, Maxine Walker and Willie Henderson and having been informed that an affidavit has been filed against them charging that they on July 27, 1964 "...did wilfully, feloniously and maliciously violate Ord. #2 & 329 Disturbing the Peace Causing a scene and failure to move on when told by police officer..." reserving their right to file other special pleadings herein, plead that they are unable to properly prepare their defense herein until they are furnished with a Bill of Particulars upon the following:

1. What particular acts of defendants violated ordinance Number 2?
2. In what way did defendants cause a scene?
3. In what way did defendants disturb the peace?
4. Which police officer told which defendant to move on?
5. Where were defendants when the alleged offense was committed?
6. What time was the alleged offense committed?
7. Does the City of Jonesboro maintain separate libraries for Negroes and whites?
8. If so, are Negroes permitted to use all public libraries without regard to race?
9. If so, have the police department and the sheriff's department been so instructed?

WHEREFORE, your defendants pray that the Town of Jonesboro through the city attorney be ordered by the Court to furnish the said Bill of Particulars above requested; and that service of same be made upon your defendants through undersigned counsel.

ATTORNEYS FOR DEFENDANT
COLLINS, DOUGLAS & ELIE
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA

BY:_____

JAMES SHARP, JR.
105 N. 23rd Street
Monroe, Louisiana

Murphy W. Bell
971 South 13th Street
Baton Rouge, Louisiana

OF COUNSEL:

CARL RACHLIN
38 PARK ROW
NEW YORK 38, NEW YORK

TOWN OF JONESBORO	:	MAYOR'S COURT, TOWN OF JONESBORO
VS.	:	PARISH OF JACKSON
DANIEL MITCHELL, ET AL	:	STATE OF LOUISIANA

ANSWER TO APPLICATION FOR BILL OF PARTICULARS

Now into Court, through undersigned counsel, comes the TOWN OF JONESBORO, and for answer to the application for a bill of particulars filed by the defendants: DANIEL MITCHELL, WILL PALMER, JR., JIMMIE C. LEONARD, EARLEAN KNOX, ANNIE P. JOHNSON, SHIRLEY POTTS, MARY E. POTTS, GLENN E. JOHNSON, MAXINE WALKER and WILLIE HENDERSON, in this matter, with respect represents that:

1.

In answer to Questions 1, 2, 3, 5, and 6, it is alleged that the defendants did, at or between the hour of 9:00 to 10:00 o'clock A.M. on the 27th day of July, 1964, then and there gather together on the sidewalk on South Polk Street, Jonesboro, Louisiana, across the street from SOUTHERN FUNERAL HOME, whereat a dead body was lying in state pending the holding of a funeral for said decedent and did then and there use such loud and boisterous language, creating such a furor and gathering together that the same did tend to alarm and disturb the peace and dignity of the public in the area surrounding the funeral home and the coming and going of the public, in the area, visiting the funeral home during the lying in state of the dead body and did then and there fail to move on and disburse when ordered and directed to do so by public peace officers of the Town of Jonesboro and the Parish of Jackson in violation of Ordinance #2 and Sub-section C of Section 2 of Ordinance #329 of the Town of Jonesboro.

2.

In answer to Questions 4, 7, 8, and 9, your respondent alleges the questions are not material, are irrelevant, without foundation or bearing to the charges listed.

WHEREFORE, your respondent prays that this answer to the application for the bill of particulars be deemed sufficient and that the case proceed to trial in accordance with law.

W. JACKSON EMMONS
ATTORNEY AT LAW
P. O. DRAWER 726
JONESBORO, LOUISIANA

Certificate

I, hereby certify that I have served a copy of the above and foregoing answer to an application for Bill of Particulars in this matter on Attorney James Sharp, Jr., Attorney for defendants, before the trial of this case, by handing a copy to him.

Jonesboro, Louisiana, this 30th day of September, 1964.

W. JACKSON EMMONS

Office Phone 323-8372

Residence Phone FA 3-1912

JAMES SHARP, JR.
ATTORNEY AT LAW AND NOTARY PUBLIC
105 N. 23rd Street
P. O. Box 771
MONROE, LOUISIANA

September 2, 1964

Collins, Douglas & Elie
Attorneys & Counsellors at Law
201 Douglass Life Insurance Building
2211 Dryades Street
New Orleans, Louisiana 70113

Re: Daniel Mitchell, et al
Jonesboro Cases

Gentlemen:

I have just returned from Jonesboro where I represented several of the above defendants in the Mayor's Court. The ones that were arraigned were those who are charged with distrubing the peace by being at the library namely: Daniel Mitchell, Will Palmer, Jr., Jimmie C. Leonard, Earlean Knox, Annie P. Johnson, Shirley Potts, Mary E. Potts, Glenn E. Johnson, Maxine Walker and Willie Henderson.

The District Attorney advised that he would arraign the defendants who were involved in the swimming pool on Wednesday, September 9, 1964 at 10:00 A.M. You are advised now that I cannot be present for this arraignment as I must be in Richmond, Virginia on this date.

I am enclosing herein a copy of the affidavit charging Daniel Mitchell with distrubing the peace in violation of ordinance No. 2 and 329. All other affidavits read the same.

I was unable to get a copy of this ordinance but attached hereto a summary of each.

Very truly yours,

James Sharp, Jr.

JS:gw
Enclosure

bcc

COLLINS, DOUGLAS & ELIE
ATTORNEYS & COUNSELLORS AT LAW
201 DOUGLASS LIFE INSURANCE BUILDING
2211 DRYADES STREET
NEW ORLEANS 13, LOUISIANA

SEP 14 1964

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE

TELEPHONE
523-5197

September 11, 1964

COPY

Clerk
Mayors Court
Jonesboro, Louisiana

RE: Town of Jonesboro
vs
Daniel Mitchell et al

Dear Sir:

Enclosed herewith you will find copies of the application for a bill of particulars and a motion to quash in connection with the above case. I am hereby requesting that these documents be filed.

By carbon copy of this letter, I am forwarding copies of these documents to Mr. W. Jackson Emmons, City Attorney.

Yours sincerely,

COLLINS, DOUGLAS & ELIE

BY: Robert F Collins

RFC/emr
Enclosures
CC: Mr. W. Jackson Emmons
City Attorney
Jonesboro, Louisiana

Office Phone 323-8372 Residence Phone FA 3-1912

JAMES SHARP, JR.
ATTORNEY AT LAW AND NOTARY PUBLIC
105 N. 23rd Street
P. O. Box 271
MONROE, LOUISIANA

October 2, 1964

Collins, Douglas & Elie
Attorneys & Counsellors at Law
201 Douglass Life Insurance Building
2211 Dryades Street
New Orleans, Louisiana 70113

Re: Daniel Mitchell et al
Jonesboro Cases

Gentlemen:

On September 30, 1964 the above cases involving the library were tried. Each defendant was found guilty and asked for the usual twenty-four hours before sentence. I entered a plea of guilty for Shirley Potts and paid her fine in the sum of $11.50. On Thurday, October 1, 1964 all defendants were sentenced to pay a fine of $11.50 or ten days in jail. I asked for and was granted an appeal to the District Court of Jackson Parish Louisiana.

Please note that Robert L. Gray was not named in either of the motions which we filed and should be included in our proceedings hereafter. The appeal is returnable on October 23, 1964.

Conformed copy of the answer to our motion for a bill of particulars is enclosed herein.

Very truly yours,

James Sharp, Jr.

JS:gw

in the position to present the total factual evidence already
since all the facts are not available, it is suggested that these
findings have enough basis to warrant action.

1. During the latter part of July and the first weeks of August,
several staff members (CORE) and over forty local persons were
arrested while participating in CORE sponsored activities and
were alleged to have done the same. The community responded
by putting up several thousands of dollars in property bonds to get
the above persons out of jail. In many instances this property
represents their only holdings. While not to suggest that
numerous other communities have not done the same, in New Orleans,
Plaquemine and Clinton note to the contrary on several points,
at the same time, it seems that CORE has not responded to defending
the rights and persons of those mentioned in this report as
it has done in other communities.

2. There are (4) four cases now pending in Jeanerette. One case
came went through the first stages of the judicial process
on Sept. 30 and Oct. 1. The second set of cases will come up
for trial on Oct. 7th involving some 15 persons. These fifteen
persons were arraigned without counsel several weeks ago. In
none of the foregoing has legal aid been the most vigorous and
efficient.

3. Affirmative action with regard to suits at Library, Mall
and Court House facilities has been nil. Suits were drawn up
some months. One would expect that a thorough relationship
between the legal and motion arm of a project would move
toward a higher degree of effectiveness, if properly connected.
More swift, far reaching action was pursued initially, one
expects that the attorneys herein discussed would not have
reached this stage however as they have, it is [illegible]
the person can be put back together and we can move about
freely there.

Gordon, I realize that this is a rather terse statement. At the
same time, I felt it necessary that [illegible] matters be pointed
out. As I mentioned in an earlier conversation, there may be need
of bond for this week ahead. Fred Brooks will communicate with you
if such need materializes.

Sincerely,

Daniel Mitchell

Note: Materials mailed in North Louisiana.

CR

10/16/64

Legal Problems in Jonesboro, La.

This statement should not be considered a negative criticism of the legal position of CORE in Jonesboro, but rather, an observation on the critical state of affairs existing there. While one is not in the position to present the total fotual ~~xxxxxxx~~ situation since all the facts are not available, t is suggested that these findings have enough basis to warrant ntice.

1. During the latter part of July and te first weeks of August, several staff members (CORE) and ove forty local persons were arrested while participating in CORE sponsered activities or were alleged to have done the same. The community responded by putting up several thousands of dollars in property to get the above persons out of jail. In may instaness this property represents their only holdings. This is not to suggest that numerous other communities have not done the same. To the contrary, Plaquemine and Clinton rose to the occassion on several points. At the same time, it seems that CORE has not responded in defending the rights and persons of those considered in this report as it has done in other communities.

a. There are (4) four cases now pending in Jonesboro. One such case went through the first stages of the judicial process on Sept. 30 and Oct. 1. The second set of cases will come up for trial on Oct. 7th involving some 15 persons. These fifteen persons were arraigned without counsel several weeks ago. In none of the foregoing has legal aid been the most vigorous, nor effecient.

b. Affirmative action with regard to suits at Library, Pool, and Court House facilities has been nil. Suits were drawn up this summer. One would expect that a meaniful relationship betwsen the legal and action arm of a projeot would move toward a higher degree of effectiveness, if properly conducted. And swift, far reaching action been pursued initially, one expects that the affairs herein discussed would not have reached this state. Insofar as they have, it is hoped that the pieces can be put back together and we can move ahead from there.

Gordon, I realize that this is a rather terse statement. At the same time, I felt it necessary that ~~xxxx~~ certain matters be pointed out. As I mentioned in an earlier conversation, there may be need of bond for this weeks cases. Fred Brooks will communicate with you if such need materializes.

Sincerely,

Daniel Mitchell

Note: Materials needed in North Louisiana.

Office Phone 323-8372 Residence Phone FA 3-1912

JAMES SHARP, JR.
ATTORNEY AT LAW AND NOTARY PUBLIC
105 N. 23rd Street
P. O. Box 271
MONROE, LOUISIANA

October 8, 1964

Collins, Douglas & Elie
Attorneys & Counsellors at Law
201 Douglass Life Insurance Building
2211 Dryades Street
New Orleans, Louisiana 70113

Re: Jonesboro Cases
Swimming Pool

Gentlemen:

I appeared in Jonesboro today and took an appeal in the above cases, which appeal was made returnable in the District Court for Jackson Parish on October 30, 1964. The fines for each defendant was $11.50 or ten days in jail except for Frank Davis, Jr. whose fine was $30.00 or (30) thirty days in jail. It appears that Frank Davis, Jr. has a record and this is the reason for the heavy fine.

Be advised also that Tolbert Wyatt was absent from Court and therefore was not tried. In order to dispose of this matter I stipulated that the evidence received in Court yesterday be considered in disposing of his case. He was found guilty and given the same sentence as the others.

These defendants are: Freddie Robinson, Tolbert Wyatt, Frank Davis, Jr., Willard Smith Roll, Robert E. Bradford, Louise Nash, Hermen Williams, Jr. and Billy Wayne Briggs.

Very truly yours,

James Sharp, Jr.

JS:gw

COLLINS, DOUGLAS & ELIE
ATTORNEYS & COUNSELLORS AT LAW
201 DOUGLASS LIFE INSURANCE BUILDING
2211 DRYADES STREET
NEW ORLEANS 13, LOUISIANA

OCT 19 1964

October 10, 1964

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE

TELEPHONE
523-5197

Mr. James Sharp, Jr.
Attorney at Law
105N. 23rd Street
P. O. Box 271
Monroe, Louisiana

C O P Y

Dear James:

Enclosed herewith you will find a check in the amount of $380.50 which is the amount due you as of October 1, 1964. This check includes payment for the following items, as submitted by Lolis to the CORE national office:

Balance due from previous statement	$110.50
Fee and mileage, Jonesboro, August 28, 1964	60.00
Fee and mileage, Jonesboro, September 2, 1964, (Arraignment)	60.00
Fee and mileage, Jonesboro, September 30, 1964, (Trial)	100.00
Fee and mileage, Jonesboro, October 1, 1964, (Sentencing)	50.00
TOTAL	$380.50

We received your letter of October 8, in which you advised us that the appeals had been taken in the Jonesboro Swimming Pool cases. We appreciate your handling of these cases and the expeditious reports rendered concerning the same. My thanks also for the hospitality shown me on my recent trip to Jonesboro and Monroe.

By carbon copy of this letter, I am informing our General Counsel, Carl Rachlin, of what is being done, and I am also forwarding him copies of your letters to us.

Yours sincerely,

ROBERT F. COLLINS

RFC/amr
Enclosure
CC: Carl Rachlin, Esq.

cc: CC

[enclosed, Collins to Sharp, 1964, Oct. 10]

STATE AT

JAMES SHARP, JR.

ATTORNEY AT LAW AND NOTARY PUBLIC
Office Phone 323-8372 — P. O. BOX 22
105 N. 23RD STREET

MONROE, LA. August 25

Mr. Lolis E. Elie
Attorney at Law
207 Louisiana Life Insurance Building
2211 Gravier Street
New Orleans, Louisiana

Jonesboro and Monroe Cases

25 hours - - -

824 Livingston Avenue
Syracuse, New York
October 12, 1964

OCT 14 1964

Robert Collins, Esq.
Collins, Douglas and Eli
2211 Dryades Street
New Orleans, Louisiana

Dear Bob:

It is my understanding that further adjudication of the case TOWN OF JONESBORO v DANIEL MITCHELL et al will begin in District Court of Jackson Parish on October 23, 1964.

You are, of course, aware of the fact that I, along with several others, am now out on a 125.00 bond pending appearance for the appeal proceedings. The question that presents itself is whether, in fact, some arrangement might be made wherein it will not be necessary for me to return to the fore mentioned. It cost over 400.00 for two of us to travel from New York for the last case. And insofar as the fine is only 11.50, it seems that it might, on the one hand, be wise to save the money and have it go toward the Louisiana Project in view of the fact that it has gotten next to nothing financially since August.

There is, of course, another side to the matter. Surely, one must raise questions about the matter of ~~changing a plea~~ discontinuing appeal in a case that is clearly being unjustly prosecuted, and where the Supreme Court has clearly set the guide line as in Henry v City of Rock Hill, 12 L ed 2nd 79, and in Edwards v South Carolina, 372 U.S. 229. Whether, in fact, it is necessary for one to change a plea may not be the case here. In any event, these are the immediate questions in my mind. Your advice in the matter would be greatly appreciated. That is, should I appear, and if not will this hurt the continuance of the appeal, etc.?

Waiting to hear from you.

Sincerely,

David Mitchell

Danny Mitchell

cc
Carl Rachlin, Esq.
Congress of Racial Equality
38 Park Row
New York 38, New York

Loc. Ler. Gen.

OCT 19 1964

COLLINS, DOUGLAS & ELIE
ATTORNEYS & COUNSELLORS AT LAW
201 DOUGLASS LIFE INSURANCE BUILDING
2211 DRYADES STREET
NEW ORLEANS 13, LOUISIANA

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE

TELEPHONE
523-5197

October 15, 1964

COPY

Mr. Danny Mitchell
824 Livingston Avenue
Syracuse, New York

Dear Danny:

I received your letter and I will look into the matter of your pleading guilty and paying a $11.50 fine. It is my understanding that it will not be necessary for any of the people arrested in connection with the Jonesboro cases to return for trial in the District Court on October 23, 1964.

By carbon copy of this letter, I am requesting our co-counsel, Mr. James Sharp, to verify my understanding of this case and to advise accordingly.

Yours sincerely,

COLLINS, DOUGLAS & ELIE

BY: Robert F. Collins/amr

RFC/amr
CC: James Sharp, Esq.
105 N. 23rd Street
P. O. Box 271
Monroe, Louisiana

Carl Rachlin, Esq.
38 Park Row
New York 38, New York

E KATHRYN BEICH, INC. VS. BISHOP, JOAN 1969
(DISPUTE ABOUT FURNITURE BOUGHT)

Box 32
Folder 3

cal Society Of Wisconsin

Please Retain Original Order

KATHRYN BEICH, INC,

Plaintiff

vs.

JOAN BISHOP,

Defendant

INDEX NO. 165592-68
ANSWER

Defendant, as and for its answer, alleges:

For its first defense:

1. Defendant denies each and every allegation of the Complaint.

For its second defense:

2. Defendant denies that she has been properly served and that this Court has jurisdiction over her.

For its third defense:

3. $200 payment has been made which was an accord and satisfaction.

For its fourth defense:

4. Defendant acted solely as agent of Citywide Welfare which is solely responsible for the debt.

5. On information and belief, Citywide Welfare is an indispensable party.

WHEREFORE, defendant prays that this action be dismissed for lack of jurisdiction and for failure to state a cause of action.

Dated: January 27, 1969

M. JAMES SPITZER, JR.
Attorney for Defendant
164 Madison Avenue - 4th floor
New York, New York
Tele: 532-8216

SAMUEL K. FIELD
Attorney for Plaintiff
401 Broadway
New York, New York

Samuel K. Field

Counsellor at Law

—

Jay W. Rosen

401 Broadway
New York 13, N.Y.

—

Canal 6- *5153* *5154* *5155* *5159*

Area Code 212

January 22, 1969

James Spitzer, Esq.
164 Madison Avenue
New York, N.Y. 4th Floor

Re: Kathryn Beich Inc.
vs. Joan Bishop & City Wide Co.
etc.

Dear Mr. Spitzer:

When I talked with you last on January 3 you advised me that you would take it up with your client and let me know what you intend to do about trying to adjust this obligation.

May I hear from you.

Very truly yours

Samuel K. Field

SKF:jb

29 January 1969

Mr. Hulbert James
Citywide Welfare
514 West 126th Street
New York, New York

RE: The Candy case BEICH, INC. vs. CITYWIDE

Dear Mr. James:

Not having heard from you, I assumed you did not want anything done. As I told your office, I think this is a mistake. Not only can a judgment be secured against Citywide but also against you personally. You are not protected from a judgment.

I advise you as strongly as I can to call Carl on this. I have answered for Joan Bishop and am representing her. I will be glad if you want to do what I can to settle this for you, but if we have to go to court David Gillman should handle this so that there is no conflict of interest.

Bread and power,

Jim Spitzer

JS/BG

M. JAMES SPITZER, JR.
164 Madison Ave.
4th Floor
New York, New York 10016

14 February 1969

Mr. Richard Sachs
Sachs Quality Stores
330 Bruckner Boulevard
Bronx, New York

Dear Mr. Sachs:

I have spoken to Mrs. Robinson again. The facts as I understand them are as follows: On or about 20 November 1968, she actually went to the store, spoke to a woman about having the furniture delivered, and explained that she had a new apartment and needed the furniture as quickly as possible. She was told it would take two weeks to deliver furniture. In the early part of December she called the store and was told they would deliver it as soon as possible. Finally, on December 20 she returned to the store, was told the furniture had been sold, and chose new furniture.

I am concerned that our dealings have not been as pleasant as they should be. I want to make it clear that both my client and I want to be completely reasonable about this. Nevertheless, I feel that Mrs. Robinson is entitled to something in compensation for the fact that even though she had to pay rent, she was unable to move into her apartment because there was no furniture, and as a result also had to pay additional rent to stay temporarily in another place with really squalid conditions.

I might also point out that while I understand the problems of the store, it remains true that on October 14 the store accepted payment from her on the furniture and as late as November 20 she was told in person that the furniture would be delivered. I do not feel, under these circumstances, that the request for compensation is unreasonable.

The rental on the apartment is $80.00 per month. I want to emphasize my conviction that this can be adjusted in a friendly manner. I am acting here on the behalf of a friend who came to me for assistance and who in my view, at least, was justifiably upset.

Sincerely,

M. James Spitzer

M. James Spitzer, Jr.

DRAFT
3 February 1969

NOT ON letterhead
MAIL IN PLAIN ENVELOPE
OK

___ February 1969

Mr. Richard Sachs
Sachs Quality Stores
330 Bruckner Boulevard
Bronx, New York

Dear Mr. Sachs:

I have spoken to Mrs. Robinson again. The facts as I understand them are as follows: On or about 20 November 1968, she actually went to the store, spoke to a woman about having the furniture delivered, and explained that she had a new apartment and needed the furniture as quickly as possible. She was told it would take two weeks to deliver furniture. In the early part of December she called the store and was told they would deliver it as soon as possible. Finally, on December 20 she returned to the store, was told the furniture had been sold, and chose new furniture.

I am concerned that our dealings have not been as pleasant as they should be. I want to make it clear that both my client and I want to be completely reasonable about this. Nevertheless, I feel that Mrs. Robinson is entitled to something in compensation for the fact that even though she had to pay rent, she was unable to

move into her apartment because there was no furniture, and was a result also had to pay rent to her sister to stay with her in really squalid conditions.

I might also point out that while I understand the problems of the store, it remains true that on October 14 the store accepted payment from her on the furniture and as late as November 20 she was told in person that the furniture would be delivered. I do not feel, under these circumstances, that the request for compensation is unreasonable.

The rental on the apartment is $80.00 per month. I want to emphasize my conviction that this can be adjusted in a friendly manner. I am acting here on the behalf of a friend who came to me for assistance and who in my view, at least, was justifiably upset.

Sincerely,

M. James Smith

Summons, Services required
C.C.A. § 402 (5) Service unrestricted as to place or method.
Rule 2 Civil Ct. 2-64.

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF NEW YORK

KATHRYN BEICH, INC.

Plaintiff

against

Joan Bishop

Defendant

Index No.

Summons

Plaintiff's Residence

Address: Bloomington, Ill.

The basis of the venue designated is:

To the above named defendant

You are hereby summoned *to appear in the Civil Court of the City of New York, County of New York at the office of the Clerk of the said Court at 111 Centre Street, in the County of New York, City and State of New York, within the time provided by law as noted below and to make answer to the complaint which is annexed hereto; upon your failure to answer, judgment will be taken against you for the relief demanded in the complaint, together with the costs of this action.*

Dated, the 1st *day of* November *19* 68

Defendant's Address:

40 West 115th St.
New York, NY 26
722-6490 Apt. #3E F

SAMUEL K. FIELD
Attorney for Plaintiff
Office, Post Office Address and Telephone Number
401 Broadway
Borough of Manhattan New York, N. Y. 10013
CAnal 6-5153-4-5-9

NOTE: The law provides that:

(a) If this summons is served by its delivery to you personally within the City of New York, you must appear and answer within TEN days after such service; or

(b) If this summons is served by delivery to any person other than you personally, or is served outside the City of New York, or by publication, *or by any means other than personal delivery to you within the City of New York*, you are allowed THIRTY days *after the proof of service thereof is filed with the Clerk of this Court* within which to appear and answer.

SERVICE BY MAIL, ETC.

State of New York, County of ss.:

being duly sworn, deposes and says; that deponent is not a party to this action, is over 18 years of age and resides at

deponent attempted to serve the within summons and complaint by personal delivery upon the defendant

at

On calling there

That personal delivery service could not be made with due diligence upon the said defendant and therefor deponent on the day of 19 served a copy of the summons and complaint on said defendant by enclosing same in a postpaid sealed wrapper properly addressed to said defendant at defendant's last known residence, No.

and depositing said wrapper in—a post office—official depository under the exclusive care and custody of the United States post office department within New York State strike out either (a) or (b)

and (a) Deponent affixed a copy of same to the door of
(b) Deponent delivered a copy of same to

whom deponent knew to be

and a person of suitable age and discretion at

No.

said premises being defendant's — place of business — dwelling house — usual place of abode — within the state.

Sworn to before me this
day of 19

Index No. 165592-68

Civil Court of the City of New York
County of New York

KATHRYN BEICH, INC. *Plaintiff*

against

JOHN BISHOP *Defendant*

COMPLAINT

Plaintiff, complaining of the defendant, alleges:

Action for goods sold and delivered by plaintiff to defendant

at the defendant's special instance and request

on or about and between

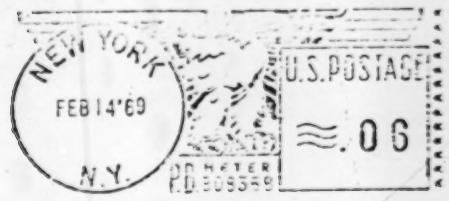
4-27-67

at the agreed price and reasonable value of $ 587.52, no part of which has been paid although duly demanded; except the sum of $, leaving a balance of $ 587.52 still due and owing, payment of which has been demanded but refused.

WHEREFORE, plaintiff demands judgment against defendant in the sum of $587.52 with interest thereon from the 27th day of April 19 67, together with costs and disbursements of this action.

SAMUEL K. FIELD
Attorney for Plaintiff
Office, Post Office Address and Telephone Number
401 Broadway
Borough of Manhattan New York, N. Y. 10013
CAnal 6-5153-4-5-9

M. James Spitzer, Jr.
164 Madison Avenue
4th Floor
New York, New York 10016



Mr. Richard Sachs
Sachs Quality Stores
330 Bruckner Boulevard
Bronx, New York

IF YOU WISH TO, YOU CAN STRAIGHTEN THIS MATTER OUT AND AVOID GOING TO COURT BY GETTING IN TOUCH WITH THE ATTORNEY FOR THE PLAINTIFF:

SAMUEL K. FIELD, 401 BROADWAY
NEW YORK, N.Y. 10013
TELEPHONE: CANAL 6-5153

RE KELLY, JOHN et.al. VS. WYMAN, GEORGE, K. et.al. NEW YORK 1969
(PROCEDURE IN FAIR HEARINGS for WELFARE RECIPIENTS)

Box 3
Folder 4

cal Society Of Wisconsin

Please Retain Original Order

ATTORNEY GENERAL

DEPARTMENT OF LAW
STATE OFFICE BUILDING
80 CENTRE STREET
NEW YORK 13, N. Y.
TELEPHONE:
488-7431

January 8, 1969

Re: Kelly, et al. v. Wyman, et al.

Hon. John Marshall Harlan
United States Supreme Court
Washington, D.C.

Honorable Sir:

Please be advised that after careful consideration, the State of New York has decided to pursue the appeal along with the City of New York in the above mentioned case. Therefore, a Notice of Appeal on behalf of the State of New York from the decision of the three-judge Court in the above mentioned matter was filed on January 8, 1969.

As far as the motion for the stay is concerned, the State of New York wholly concurs in the position taken in the papers heretofore submitted to Your Honor by the City of New York.

Thank you for your cooperation.

Very truly yours,

LOUIS J. LEFKOWITZ
Attorney General
By

JOEL H. SACHS
Assistant Attorney General

JHS:rmz

cc: J. Lee Rankin
Corporation Counsel
Municipal Building
New York, New York 10007

Leo A. Albert, Esq.
401 West 117th Street
New York, New York 10027

Hon. Edwin L. Weisl, Jr.
Assistant Attorney General
Civil Division
Department of Justice
Washington, D.C.

Hon. Robert M. Morgenthau
United States Attorney for the
Southern District of New York
United States Courthouse
Foley Square
New York, New York 10007

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -X

JOHN KELLY, etal.,

Plaintiffs,

RUBY SHEAFE, etal.,

Plaintiffs,

and

TERESA NEGRON, etal.,

Intervenor-Plaintiffs,

against

GEORGE K. WYMAN, individually and in his capacity as Commissioner of New York State Department of Social Services, and JACK R. GOLDBERG, individually and as Commissioner of the New York City Department of Social Services, HUGH R. JONES, as Chairman of the State Board of Social Welfare, and MRS. OMAR ADAMS, DOROTHY I. HEIGHT, RICHARD G. KIMMERER, JOHN M. GALBRAITH, EDWARD J. JOHANNES, JR., ARTHUR G. HOPKINS, MRS. MONICA M. McCONVILLE, JOHN P. HALE, MRS. ALEXANDER E. HOLSTEIN, JR., FREDERICK A. KLINGENSTEIN, GEORGE F. BERLINGER, THEORDORE C. JACKSON, JOSE LOPEZ, and DAVID BERNSTEIN, as Members of the Board of Social Welfare,

Defendants.

- -X

Three-judge Court

68 Civ. 394

~~68 Civ. 864~~

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

NOTICE is hereby given that Jack R. Goldberg, a defendant above named hereby appeals to the Supreme Court of the United States from the interlocutory order of a three-judge District Court entered in this action on December 13, 1968 which (1) enjoined defendants from discontinuing public assistance to recipients thereof in the manner prescribed by

18 N.Y.C.R.R. 351.26(b), (2) denied plaintiffs' motion to enjoin the operation of 18 N.Y.C.R.R. 351.26(a) on condition that such section be construed to require

> (a) Notice of the proposed action must be mailed to a recipient at least seven days prior to the proposed effective date, advising the recipient of the reasons for the proposed action and his right to appear in person at a hearing before a review officer.
>
> (b) There must be disclosure to the recipient at such hearing of the evidence, including the source thereof, relied upon for the proposed action and an opportunity for the recipient to confront and have questioned a person so disclosed if the value of his evidence depends upon his credibility and the latter is brought into question, unless secrecy in a particular case can be demonstrated to be an important interest of the agency.
>
> (c) The review officer must be superior to the supervisor who proposed or approved the proposed action, and his decision must be based solely on the evidence before him which was made available to the recipient, with the exception for secrecy set forth above.

(3) granted plaintiffs' motion to amend their complaints, (4) granted the motion of the proposed intervenors to intervene as parties plaintiff, and (5) denied defendants motion for a summary judgment.

This appeal is taken pursuant to 28 U.S.C. §1253.

Dated: New York, N.Y.
January 6, 1969

J. LEE RANKIN
Corporation Counsel
Attorney for Defendant Jack R.
Goldberg
Office & P.O. Address
Municipal Building
Borough of Manhattan
City of New York 10007

By _____
JOHN J. LOFLIN
Assistant Corporation Counsel

TO:

LEE A. ALBERT, ESQ.,
HENRY A. FREEDMAN, ESQ.,
401 West 117th Street
New York, New York 10027
Attorneys for Plaintiffs and
Intervenor-Plaintiffs

HON. LOUIS J. LEFKOWITZ
Attorney General of the
State of New York,
80 Centre Street
New York, New York 10013
Attorney for defendants
other than Jack R. Goldberg

HON. EDWIN L. WEISL, Jr.
Assistant Attorney General
Civil Division
Department of Justice
Washington, D.C.

and

HON. ROBERT M. MORGENTHAU
United States Attorney for the
Southern District of New York
United States Court House
Foley Square, New York, N.Y. 10007
Attorneys for United States of
America, Amicus Curiae

68 Civ. 394
68 Civ. 864
Index No..... Year 19.....

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN KELLY, etal.,
Plaintiffs
RUBY SHEAFE, etal.,
Plaintiffs
and
TERESA NEGRON, etal.,
Intervenor-Plaintiffs
against
GEORGE K. WYMAN, individually etc., etal.
Defendants

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

J. LEE RANKIN,

Corporation Counsel,

Attorney for Defendant

Jack R. Goldberg

Municipal Building,

New York, N. Y. 10007

Due and timely service of a copy of the within
is hereby admitted.

New York, ...*19*.....

.....

Attorney for

To

....., *Esq.,*

Attorney for

3-50M-701768(66) 114

Center on Social Welfare Policy & Law
COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK

401 West 117th Street
New York, N. Y. 10027
(212) 280-4112

Lee A. Albert
Project Director

Paul Dodyk
Faculty Director

January 3, 1969

Mr. Carl Rachlin
Scholarship, Education & Defense Fund, Inc.
164 Madison Avenue
New York, New York 10016

Dear Carl:

I had hoped that differences that seemed to have arisen between us, particularly those stemming from our separate institutional commitments, could go without comment in light of the importance of the effort in which we are both engaged. As you well know, such efforts towards the same desire have too often been fought with petty conflict, wasteful backbitting and fragmentation. Recent reports, however, of your comments to others prevents me from ignoring this any longer.

As I understand it, you have been disturbed and vociferous over certain recent events, such as the confusion in an Ohio newspaper over the cross-category suit. The fact that the newspaper reported the plaintiffs as one in a food program suit hardly seems worthy of anyone's concern. We certainly bear no responsibility for it (and derive no benefit from it) the error was quickly rectified and the suit was properly reported, albeit without mention of your organization or mine. You were apparently also perturbed over our desire to act as co-counsel in the flat grant suit. The main reason for that is our desire to receive certain papers in the case, for we have often waited too long to receive papers served on other attorneys. But that aside, we did do a major part of the legal work in the case, which is certainly consistent with our role as co-counsel. Additionally, we were

approached directly on this case by Hulbert James and David Gilman. I must point out that you did run the press conference and indeed prepared your own press release. That doesn't disturb me, except when I hear of your remarks to persons with whom we both work. Finally, there are the Department of Agriculture suits. As you know, that was a 1,000-hour effort wholly conceived and inititated in this office. It is true that some differences arose between the NWRO and ourselves in Washington, which differences have, I think, been ironed out. You will not help matters any by imposing your interpretation on these events.

I do think that this field is quite a large enough for your organization and mine, and many others, to operate effectively. But that does require at least a molecule of cooperation and, I must add, mutual respect. I hope this letter clears the air and dispells the lack of both cooperation and respect.

Sincerely,

lee

LAA:ap

Lee A. Albert
Director

P.S. Enclosed is a recently circulated memo on Kelly, since I have heard that you are also concerned about our activities in that case. If I have omitted any other matters, please advise. I am aware of your institutional responsibilities but I do wish you would recognize that we simply are no threat to them.

MEMORANDUM TO: Martin Garbus
Harold Rothwax
Richard Kwasnick
Louise Gans
Shyleur Barrack

FROM: Lee A. Albert

DATE: January 3, 1969

RE: Kelly v. Wyman

Enclosed are recent papers filed in connection with Kelly v. Wyman and the related case of Wheeler v. Montogmery. Unfortunately, the pace of events during December and the ravages of the flu did not allow us to maintain effective circulation and communication. The amicus brief in Wheeler was necessitated by the danger of a summry disposition of that case without adequate consideration being given to the decision in Kelly and the record supporting that decision. The brief had to be prepared and printed literally in days because the papers in Wheeler were about to circulate to the various justices.

On December 13, 1968 the City of New York initiated a temporary stay from the 3-judge panel over our opposition until December 31 to allow application to be made to Justice Harlan as Circuit Justice. On December 23 we were served with the City's application and were simultaneously informed that Justice Harlan was out of town for Christmas recess. This raised the likelihood that our papers in response might never reach Justice Harlan before the time in which he would have to decide, to wit, one week. (Our papers had to be mailed to the court and then forwarded to Harlan). An undeliberated or hurried decision by Harlan would obviously not be in our interest. It is for that reason we quickly initiated an extension of the stay until January 13, which is the day on which the court itself convenes. The extension allowed us to file a full response as well as leaving open the opportunity for Harlan to refer the matter to the entire court which also would be in our interest.

January 9, 1969

Lee A. Albert, Esq.
Center on Social Welfare Policy and Law
401 West 117 Street
New York, New York 10027

Dear Lee:

Thank you for your letter of the third. Obviously, organizational rivalries should play no part in the work we do.

Just so that we may keep the air clear, the press conference on the flat grant was held in my office solely because Hulbert asked it be held there. I did not suggest it, nor would I. As you know my philosophy is, and will continue to be, that only the clients decide these issues; and in fact decide all important issues not of a technical nature.

I have been perturbed, yes, not for any personal reasons (because they don't exist), because I was called from both Ohio and Washington on the Ohio case. At about the same time, a matter of some importance developed, of the same nature, the extension in the flat grant. There would have been no problem, but all attorneys should have been called.

Then the question of Kelly v. Wyman occurred, also in a similar vein. You know that the NWRO has been disturbed in addition about other matters. So far as the Agricultural cases are concerned, it is true that the Center worked on this entirely, but you will recall, at your suggestion, I spoke to Ron Pollack of your office, offering to cooperate, to help get plaintiffs, etc. He said he could send a draft of the complaint to me. I called a couple of times, the papers never came, and I just gave up.

Obviously the role of the Center is an important, even a crucial one. All of us know the kind of work it can do and has done.

You know the regard I have for you personally and for Henry and the others.

Probably the problem is a lack of communication. Whatever your problems with other attorneys may be, you know that we keep incclose touch. Henry and I work closely on Ohio and as you know I take a personal interest and do not merely dump the problem on you.

This was also true of the flat grant. When Sylvia sent out the final draft, I made extensive suggestions and called Ed Sparer to get his suggestions which I passed on to Sylvia promptly. We do not expect anybody to do what we ought to do.

As one who has had some experience I know the importance of community organizations receiving credit for what they do. The Center does a lot and deserves a lot credit.

What has happened, I believe, is a simple failure in communications, so easily rectifiable.

We will continue to work together, as I know, with great joy in what we do. No reason exists why this shouldn't happen. Keeping in touch is a small chore in the total complex of the valuable Center.

With best regards,

Sincerely,

Carl Rachlin
Legal Director

DFRE KING, BRIAN D. VS. CITY OF MONTICELLO (FLA.), 1965

ical Society of Wisconsin

Please Retain Original Order

Box 3
Folder 5

TALLAHASSEE DIVISION

AUG 9 - 1965

OFFICE OF CLERK
U. S. DIST. COURT
NORTH. DIST. FLA.

BRIAN D. KING, *
Petitioner-Defendant, *
vs. * TALLAHASSEE CRIMINAL ACTION
CITY OF MONTICELLO, * NO. 2715
Respondent. *
* * * * * * * *

MOTION TO DISMISS REMOVAL PETITION AND
MOTION TO REMAND

TO: JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF FLORIDA

Your respondent respectfully moves this Court to dismiss the above Petition for Removal and to Remand same to the Municipal Court of the City of Monticello, Florida, and in support of these motions shows as follows:

1. A proceeding, as above entitled, is now pending and awaiting trial in the Municipal Court in the City of Monticello, Florida, such proceeding is a criminal proceeding in which Brian D. King is the defendant;

2. The petitioner, Brian D. King, is charged with disorderly conduct pursuant to Section 13-14(3), Code of Ordinances, City of Monticello, Florida.

Sec. 13-14. Disorderly conduct.

It shall be unlawful and an offense under this Code for any person to disturb or endanger the public peace or decency by any disorderly conduct.

The following acts, among others, are declared to be disorderly conduct:

(3) Being drunk, or the extravagant use of spirituous liquors. (Respondent's exhibit No. 1)

This same provision of the Code of Ordinances was furnished to one Lewis Bart Stone as admitted in paragraph 6 of Stone's Affidavit, attached to the Petition for Removal.

3. Clyde Malloy, a policeman for the City of Monticello, on July 3, 1965, while making his routine police checks found the

to be under the influ-
of spirituous liquors and arrested same for being drunk. Pe-
titioner was then informed that he was being arrested for disorder-
ly conduct as a result of his drunken condition and was then taken
to the Monticello City Police Station where the policeman, Clyde
Malloy, entered upon the police docket the Petitioner's name, the
charge, the date and the time of the arrest. Petitioner was there-
after taken to the Jefferson County Jail. Petitioner requested to
make a telephone call but policeman, Clyde Malloy, informed the
petitioner that he would not be allowed to make a telephone call
at that time because of his intoxicated condition, but would be
allowed to make his requested telephone call the following morn-
ing when he was in a more sober condition.

6. At about 7:30 o'clock P.M. the Chief of Police, Alfred
Foster, received a telephone call from Quincy, Florida, from some-
one stating that they represented CORE and wanted to know if the
Monticello police had arrested Brian King. Chief Foster then in-
formed the caller that Brian King had been arrested and was being
held under a $25.00 bond, and further that if the party would re-
turn the call in about an hour that they would be able to talk
with the arresting policeman. (Attached Affidavit of Alfred Foster)

7. At about 8:30 o'clock P.M. this same party from Quincy,
Florida called, at which time policeman Clyde Malloy informed the
calling party that Brian King had been arrested for disorderly
conduct by virtue of his drunken condition and was being held
in the County Jail under a $25.00 bond. (Attached Affidavit of
Clyde Malloy)

8. At about 9:00 o'clock P.M., July 3, 1965, Chief Foster
was approached by Rev. Sylvester Stewart and Clinton Wooten and
ten other persons, and requested information concerning Brian
King. Chief Foster informed this group that Brian King was ar-
rested for disorderly conduct by virtue of his drunken condition
and was being held in the County Jail under $25.00 bond, and that

(Attached Affidavit of Alfred Foster)

7. On Sunday, July 4, 1965, about 8:00 o'clock A.M. petitioner Brian King was released from the Jefferson County Jail upon the posting of a $25.00 bond by a person named Goldstein. (Attached Affidavit of Alfred Foster)

8. Respondent's (City of Monticello) Policeman arrested petitioner, Brian King, on the charge of disorderly conduct by virtue of his over indulgence in spirituous liquors without regard to any political, social or religious affiliations and petitioner was at all times treated with the equal dignity and respect as any other person arrested under similar circumstances.

9. Respondent therefore moves that this Court dismiss the Removal Petition and other relief requested and further moves that this case be remanded to the Municipal Court of the City of Monticello on the following grounds:

(a) The Petition to Remove does not set forth sufficient or proper grounds for removal under 28 U.S.C. 1443, 28 U.S.C. 1446 or 42 U.S.C. 1981. The purpose of and grounds for removal of State and Municipal criminal prosecution is clearly set forth in the case of City of Birmingham, Alabama v. Henry Croskey et al, 217 F. Supp. 947, as follows:

> The removal statute (Section 1443, Title 28 U.S.C.) under which the case was removed to this Court, is to be strictly construed. Shamrock Oil & Gas Corp. v. Sheets, 313 U.S. 100, 61 S.Ct. 868, 85 L.Ed. 1214 (1941). Generally, it has been said that, before the denial of civil rights will justify a removal to Federal Court, the denial of such rights must be primarily, if not exclusively, a denial of such rights, or an inability to enforce them, resulting from the constitution or laws of the State. Virginia v. Rives, 100 U.S. 313, 25 L.Ed. 667 (1879); Rand v. State of Arkansas, D.C. 191 F. Supp. 20 (1961). Alleged discrimination and illegal acts, not authorized by a State's system of laws, do not make a case removable to Federal Court; because the remedy for these wrongs is through the State Courts with the right ultimately to present the matter by writ of error to the Supreme Court of the United States. White v. Ranown (D.C. Mass. 1919), 261 F. 814. It is only where State legislation exists, interferring with the person's right of defense, that such person can have the cause removed. State of N. J. v. Weinberger, (D.C. N. J. 1930), 38 F.2d 298. A case may not be transferred unless some substantive or procedural rule of State law, as distinguished from action of officials in disregard of State law, deprives a defendant of equal civil rights. In Re Hazewood's Petition (D.C. Mich.

> It is not alleged that such practices, etc., if they exist at all, are maintained under State law. It has been held that when the constitution and laws of a State, as interpreted by its highest judicial tribunal, do not stand in the way of enforcement of rights secured equally to all citizens of the United States the possibility that, during the trial of the particular case, the State Court may not respect and enforce the right to equal protection of the laws constitutes no ground for removal. Gibson v. Miss., 162 U.S. 565, 16 S.Ct. 904 (1896), Williams v. Miss. 170 U.S. 213, 18 S.Ct. 583, 42 L.Ed. 1012 (1898).

(b) The Removal Petition does not attack any Ordinance of the City of Monticello as being unconstitutional, but only attacks the application of such Ordinances to the petitioner Brian King. The problem of vague and indefinite Ordinances came under attack in the City of Birmingham, Alabama case and the Court dismissed such objections on the grounds that the Ordinances themselves would have to be attacked as being unconstitutional and not the application of such Ordinances to the petition.

(c) The corrupt and mal administration of State and local laws is not a ground which will justify removing a case of this nature to the Federal Courts.

> There is no right of removal under this Section where alleged denial of, or inability to enforce, any right of defendant results from corrupt, illegal, or unauthorized administration of State Constitution or laws which are not discriminatory and apply to all citizens alike. State of N.C. v. Alston, (D.C.N.Y. 1964), 227 F. Supp. 887.

The petitioner is given adequate protection through the State Court procedures against any possible corrupt or mal administration of State and local laws.

> Remedy of defendant who is denied or unable to enforce civil rights in a State proceeding because of mal administration of State laws and procedure by State Officials is not removable to Federal Court, but pursuit of State appellate remedy followed by a request for review by United States Supreme Court. State of Ark. v. Howard (D.C. Ark. 1963) 218 F. Supp. 626.

(d) The Petition for Removal should be denied on the further grounds that petitioner is speculating that he will not receive a fair and just trial in the Municipal Court of the City of Monticello. The mere possibility or allegation that a fair

removal.

> When the constitution and laws of a State, as interpreted by its highest judicial tribunal, do not stand in the way of the enforcement of rights secured equally to all citizens of the United States, the possibility that during the trial of a particular case the State Court may not respect and enforce the right to equal protection of the laws constitutes no ground, under the Statute for removing the prosecution.....in advance of trial. Gibson v. Miss. 1896, 16 S.Ct. 904, 162 U.S. 565, 40 L.Ed. 1075. See also Williams v. Miss. 1897, 18 S.Ct. 583, 170 U.S. 213; State of N.J. v. Weinberg D.C. N.J. 1930, 38 F.2d 298.

(e) The petition of Brian King fails to set forth any facts which constitute grounds for jurisdiction under 42 U.S.C. 1981. The purpose of this Section was set forth in Henry v. Greenville Airport Commission as follows:

> The purpose of Congress in enacting this Section was to confer on Negro citizens rights and privileges equal to those enjoyed by white citizens and, at same time, to impose on them like duties and responsibilities, and this Section does not confer on Negroes' rights and privileges that are superior and more abundant than those accorded white citizens. Henry v. Greenville Airport Commission, D.C.S.C. 1959, 175 F. Supp. 343.

(f) The Civil Rights Act was not intended to discipline or penalize local law enforcement officials in the conduct of their duty. "The Civil Rights Acts were enacted to protect the Civil Rights of individuals and not to discipline local enforcement officers for acts that are later corrected". Coppola v. United States, 217 F.2d 153, 155. "The common law provides adequate actions for damages against errant law enforcement officials". Wolf v. People of State of Colorado, 338, U.S. 25, 30, N1, 69 S.Ct. 1359.

WHEREFORE, YOUR RESPONDENT, CITY OF MONTICELLO, REQUESTS THE FOLLOWING RELIEF:

1. That this Court deny the petition for removal and other relief as requested by Brian D. King, petitioner-defendant.

2. That the Court deny petitioner's demand of jurisdiction pursuant to 42 U.S.C. Section 1981.

3. That this Court grant respondent's Motion to Remand the criminal trial of Brian D. King to the Municipal Court, City of

cost and a reasonable attorney's fee for its attorney in responding to this petition for removal.

5. Such other and further relief as to the Court may seem just and proper.

Hamilton & Hamilton
J. Buckingham Bird
Hamilton and Bird
Attorneys for Respondent
City of Monticello

I hereby certify that a copy hereof has been furnished Mr. John D. Due, Jr., attorney for petitioner, 540½ W. Brevard St., Tallahassee, Florida, by mail, this 9th day of August, 1965.

J. Buckingham Bird
Attorney

THE FOLLOWING PAGES ARE THE BEST

AVAILABLE.

Sec. 13-13. Same—Destroying or cutting foliage.

It shall be unlawful for any person wilfully to destroy, mutilate, remove, cut, break or injure any tree, shrub, plant or garden ray flowers without the consent of the owner planted or being within any cemetery or enclosure for the burial of the dead within the town.

Cross reference—For malicious generally see Chapter 1.

Sec. 13-14. Disorderly conduct.

It shall be unlawful and an offense under this Code for any person to disturb or endanger the public peace or decency by any disorderly conduct.

The following acts, among others, are declared to be disorderly conduct:

(1) Use of obscene, abusive or profane language.

(2) Making of any threats of violence to or against any other person.

(3) Being drunk, or the extravagant use of spirituous liquors.

(4) Being noisy and disorderly in or upon any street or other public place in the town.

(5) The fast driving of any vehicle through the streets of the town.

(6) Making any indecent exposure of the person.

(7) The reckless and dangerous use of slingshots.

(8) Any noisy or disorderly conduct to the disturbance of the public peace and tranquility.

(9) Engaging in promoting, encouraging, aiding or abetting any fight, riot or noisy and disorderly proceeding on any street or public place, or in any private building or dwelling when persons residing in the vicinity are disturbed.

had been placed in the Jefferson County Jail under a $25.00 bond, and would be released as soon as the bond was posted.

3. At all times during my investigation and arrest and subsequent placing Brian King in the County Jail, I treated Brian King as any other City prisoner under the same circumstances. At no time did I harass, threaten or intimidate Brian King.

4. At no time prior to the arrest, during the arrest or while Brian King was in my custody did I see him distributing any type leaflets. At no time did I use foul, obscene language against Brian King or in his presence.

5. At no time did any person or group of persons make a request to me, that they be allowed to see Brian King, in the Jail or at any other place.

Clyde Malloy

Sworn to before me this
4th day of August, 1965.

Notary Public [illegible]
My Commission expires:

TALLAHASSEE DIVISION

BRIAN D. KING,

Petitioner-Defendant,

vs.

CITY OF MONTICELLO,

Respondent.

* * * * * * * * *

AFFIDAVIT

Alfred Foster, Chief of the Monticello Police Department, being duly sworn, deposes and says:

1. On July 3, 1965, someone called me from Quincy, Florida stating that they represented CORE and wanted to know if the Monticello Police had arrested the petitioner, Brian King. I stated yes, then I was asked about the circumstances surrounding his arrest. I told the calling party that I was not the arresting officer and that if they would call back in about an hour I would have the arresting officer near the phone to give whatever information they needed. I was asked then how much the bond was and I told them $25.00.

2. About 8:30 P.M. that same night I was on the west side of the Court House Circle with Policeman, Clyde Malloy, when the police phone rang again. Clyde Mallo[illegible] the pho[illegible].

3. About 9:00 P.M. on July 3 Officer Malloy and [illegible] on the west side of the Court House Circle when we were approached by Rev. Sylvester Stewart, Clinton Wooten and ten other Negroes, all of Jefferson County, who asked where Brian King was. I told them that he was in the County Jail and that he would be released when a $25.00 bond was posted for him.

4. On Sunday, July 4, 1965, about 8:00 A.M. a white man who gave his name as Goldstein stated that he wanted to post a $25.00 bond for Brian King's release, which I accepted and released King shortly thereafter.

corded on the date of July 3, 1965, that Clyde Malloy arrested Brian D. King at 6:45 P.M.

Alfred Fortes

Sworn to before me this
5th day of August, 1965.

Debra D Carney
Notary Public

My Commission expires:

Notary Public, State of Florida at Large
My Commission Expires April 23, 1969
Bonded by American Fire & Casualty Co.

E KINGWOOD, IDELL, D. et al. VS. CAMPBELL SOUP CO. INC. et. al. SUMTER, S. CAROLINA 1968
(JOB DISCRIMINATION)

Box 38
Folder 6

al Society Of Wisconsin

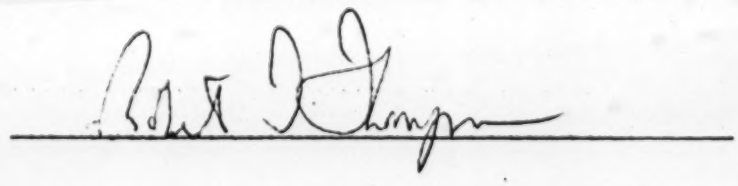
Please Retain Original Order

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

IDELL D. KINGWOOD, et al., Plaintiffs,	)	
v.	)	CIVIL ACTION NO. 67-167
CAMPBELL SOUP COMPANY, INC., A New Jersey Corporation, et al., Defendants.	)	CERTIFICATE OF SERVICE

It is certified that copies of the foregoing Requests for Admissions to Mary Blanding, Ethel Mae Burgess, Sallie Burgess, Virginia Burgess, Carrie Mae Daney, Annie Mae Goings, Idell P. Kingwood, Hattie Mae McCoy, Paralee McDowell, Ivey McDowell, Jr., Gussi Lee Mickel, James F. Parham, Catherine Preston, Beulah Rhodes, Silas Walker, Jr., Maebell Williams and Margaret Elizabeth Wright, the Plaintiffs in the above entitled cause, have been personally served upon Ernest A. Finney, Jr., Esq., 16-1/2 West Liberty Street, Sumter, South Carolina, one of the attorneys for the Plaintiffs, and that copies thereof have been served upon Matthew J. Perry, Esq., 1107-1/2 Washington Street, Columbia, South Carolina, and Carl Rachlin, Esq., 150 Nassau Street, New York, New York, the other attorneys for the Plaintiffs, by mailing copies to them through the United States Mail, postage prepaid.

Dated at Greenville, South Carolina, this 5th day of March, 1968.



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

IDELL D. KINGWOOD, et al., Plaintiffs, v. CAMPBELL SOUP COMPANY, INC., A New Jersey Corporation, et al., Defendants.	CIVIL ACTION NO. 67-167 REQUEST FOR ADMISSIONS

Campbell Soup Company (Sumter Plant) Inc., hereinafter called this Defendant, requests Mary Blanding, hereinafter called this Plaintiff, within 10 days after service of this request, to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

1. That each of the following documents, which are exhibited with this request and will again be produced for inspection upon reasonable request at the office of this Defendant's attorneys on any day within 10 days after the service of this request, is genuine:

a. Application for Employment date 6/24/66 and signed Mrs. Mary Blanding, a copy of which is annexed hereto. This document is the application for employment filed by this Plaintiff with this Defendant on June 24, 1966.

b. Petition to Chairman, Equal Employment Opportunity Commission, dated October 4, 1966, signed by Mary Blanding, among others. This is a document which was signed by this Plaintiff, and other persons, during a meeting held in Sumter, South Carolina, on October 4, 1966.

a. The said Application for Employment, exhibited with this request, was filed by this Plaintiff with this Defendant on June 24, 1966, and is the only written application for employment filed by this Plaintiff with either of the Defendants.

b. The said Petition, exhibited with this request, was filed by or on behalf of this Plaintiff with the Equal Employment Opportunity Commission in Washington, D. C., sometime in October, 1966.

c. The said Petition, exhibited with this request, was not sworn to by this Plaintiff.

d. With the exception of the said Petition, exhibited with this request, this Plaintiff did not file any kind of unfair employment practice charge with the Equal Employment Opportunity Commission or any of its representatives against either of the Defendants at any time prior to the institution of this proceeding.

e. This Plaintiff has never been denied permission by either of the Defendants or any of their representatives to file an application for employment.

f. The Wonderlic Personnel Test was administered to this Plaintiff by a representative of this Defendant sometime during September, 1966, and immediately thereafter this Plaintiff was advised by the said representative of this Defendant that she had failed to pass the said test.

Robert T. Thompson

Homer L. Deakins, Jr.

The Daniel Building
Greenville, S. C. 29602

Attorneys for Campbell Soup Company
(Sumter Plant) Inc.

PERSONAL

(Please Print Name) (Last) (First) (Middle) Social Security Number

Address (Street & Number) (City) (Zone) State Telephone

Male ~~—~~ Female ✓ Age 34 Date of Birth March 5-26 (Month, Day, Year) Are you a Citizen? Yes ✓ No

Marital Status: Single ___ Divorced ___ Married ✓ Widow(er) ___ No. of Children 11

Height 5'2" Weight 140 Is anyone dependent upon you for support? Yes Who? Children

What relatives do you have in our employ? None (Name and Relationship)

Have you ever been employed by this Company? No (Yes or No) If Yes, From ___ To ___

In case of emergency notify Mrs. Emma Ewalt Address Fleming Telephone 435-2971

List any Physical Defects or Serious Illnesses None

Shift Preferred Any Date Available Any Time

Position Desired Any Pay Expected ___ How were you recommended to us?

Sidewalk Superintendent, Radio, Ad in Paper

Apply Ed 13 for Address

PREVIOUS EMPLOYMENT

(List Most Recent Job First)

EXPERIENCE

COMPANY	TYPE OF WORK PERFORMED	DATE EMPLOYED	REASON FOR LEAVING	SALARY
Salvage Yard (Name) (Address) (City & State)		From Oct To May 57		
(Name) (Address) (City & State)		From To		
(Name) (Address) (City & State)		From To		

EDUCATION

EDUCATION	NAME OF SCHOOL AND LOCATION	DATES ATTENDED	GRADE AVERAGE	HIGHEST GRADE COMPLETED
Grade School	Marion Trade			
High School	M.T.I.		B	A
College or University				
Correspondence or Other				

If the answer to any of the above is Yes, please explain fully: _____

Have you ever received Workmen's Compensation for any disability incurred in previous employment? No

If yes, please explain: _____

Military Service: Branch _____ Date Inducted _____ Date of Discharge _____

Grade or Rank _____ Military Job _____ Type of Discharge _____

Give three character references. Do not include relatives and former employers.

Name Rev. D.E. James Address P.O. Box 466, Summerton, S.C.

Name E.W. Till, Sr. Address Rt. 1, Hemingway, S.C.

Name People Drive Inn Address Hemingway, S.C.

I agree to submit a birth certificate or other evidence to substantiate my age. I have rechecked this application for errors and understand that the furnishing of misinformation or the withholding of information may subject me to immediate dismissal.

Witness _____ Signature _____

DO NOT WRITE BELOW THIS LINE

Medical Exam: Passed _____ Rejected _____ Restrictions: _____ Date _____ Dr's. Initials: _____

DATE	DEPARTMENT	POSITION	RATE	REMARKS

We, and each of us, the undersigned have found on many occasions that the SWANSON FROZEN FOOD DIVISION, of the Campbell Soup Company Located at Sumter, South Carolina practices discrimination Toward Negroes and Toward me the undersigned in the screening and placement on JOBS NOW Available and WERE AVAILABLE SINCE the Company Came To Sumter. Because this Company used and USES the SOUTH CAROLINA Employment SECURITY COMMISSION To receive our applications, we are Subjected to discrimination because that Commission has been found To act with discrimination towards Negroes - delayed referrals or no referrals. We, and each of us, want this Company's Division INvestigated and some effort made To get us some of the Jobs there.

Dated: October 4, 1966.

Signed:

			Address:
		MAINE	
AFC-10-747	1.	Lydia Mae Pitts	413 Priscad Road
748	2.	Alice Lee Frazier	44 S. St. Sumter
749	3.	Annie Mae Goings	15 Mitchell St
750	4.	Mary Lee Lucas	R 11 Box 101 Alcolu, S.C.

Page one of three Pages

Page 2 of 3 pages

				Address:
AT 6-10-751		Mrs Virginia Burgess		Rt 5, Box 338-B Sumter, S.C.
	752	2. Mrs Wilkes C Davis		526 Dr Sumter St
	753	3. Mrs. Ruth D. Knight		% Simons Lane
	754	4. Mrs Ola mae Jones		Rute 2 Box 51C
	755	5. Mrs Phoebe Davis		% 1 Box 117a Alcolu SC
	756	6. Miss Gladys Romeo		P.O. Box 163 Pinewood, S.C
	757	7. Mrs. Delois Bailford		Post office Pinewood S.C.
	758	8. Mrs Cathrine Gaston		Rt 2 Box 181
	759	9. Mary Blondin		Routh 1 Box 94
	760	10. Mrs. Margaret Elizabeth Knight		Rt 5 Box 86-A Sumter,
	761	11. Mrs Hattie mae McCoy		Rte 1, Box 238-B Sumter
	762	12. Miss Hattie M. Gaston		Rte 2 Box 181 Manning
	763	13. Mrs Mary E. Hicks		Rte 2 box 177 Manning S.C.
	764	14. Mrs Mary McCants		Rte. 1 Box 90-B Olanta S.C
	765	15. Mrs Evelyn Dawsey		Olanta S.C Route 1 Box 90-
	766	16. Nora M. Perry		Pinewood S.C.,
	767	17. Ethel mae Burgess		RD. 1 Box 55 Olanta S.C
	768	18. Carrie Mae Dowry		Olanta S.C. B. 86 B.1
	769	19. Lucie Bracey		Pinewood S.C.
	770	20. Mrs Meta Brunson		R. 2 Box 211-A Pinewood S.C.
	771	21. Mr Silas walker jr		R 1 Box 110 Galivants
	772	22. Jannie G Graham		202 Broad St.
	773	24. Hazel Lee Mickel		

Dated: October 4, 1964

I, Dorothy V. Sampson do certify That I personally saw each of the subscribers sign his or her name to this petition on the date above noted.

Dorothy V. Sampson
39 Washington Street
Sumter, S. Carolina.

FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

IDELL D. KINGWOOD, et al., Plaintiffs, v. CAMPBELL SOUP COMPANY, INC., A New Jersey Corporation, et al., Defendants.	CIVIL ACTION NO. 67-167 REQUEST FOR ADMISSIONS

Campbell Soup Company (Sumter Plant) Inc., hereinafter called this Defendant, requests Idell D. Kingwood, hereinafter called this Plaintiff, within 10 days after service of this request, to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

1. That each of the following documents, which are exhibited with this request and will again be produced for inspection upon reasonable request at the office of this Defendant's attorneys on any day within 10 days after the service of this request, is genuine:

a. Application for Employment dated 8/17/66 and signed Idell P. Kingwood, a copy of which is annexed hereto. This document is the application for employment filed by this Plaintiff with this Defendant on August 17, 1966.

b. Wonderlic Personnel Test, Form I, dated September 19, 1966, and signed Idell P. Kingwood, a copy of which is annexed hereto. This document is the Wonderlic Personnel Test which was administered to this Plaintiff by a representative of this Defendant on September 19, 1966.

signed by Idell P. Kingwood, a copy of which is annexed hereto. This document is the Charge of Discrimination filed by this Plaintiff against this Defendant with the Equal Employment Opportunity Commission on or about January 10, 1967.

2. That each of the following statement is true:

a. The said Application for Employment, exhibited with this request, was filed by this Plaintiff with this Defendant on August 17, 1966, and is the only written application for employment filed by this Plaintiff with either of the Defendants.

b. The said Wonderlic Personnel Test, exhibited with this request, was administered to this Plaintiff by a representative of this Defendant on September 19, 1966.

c. The said Charge of Discrimination, exhibited with this request, was filed by or on behalf of this Plaintiff on or about January 10, 1967, with the Atlanta Regional Office of the Equal Employment Opportunity Commission.

d. This Plaintiff did not at any time prior to the institution of this proceeding mail or otherwise serve either of the Defendants with a copy of any letter signed by or on behalf of this Plaintiff addressed to the Equal Employment Opportunity Commission, Washington, D. C., dated October 3, 1966.

e. With the exception of the two documents mentioned in paragraphs 2 a and 2 b above, this Plaintiff did not at any time prior to the institution of this proceeding file any other written document with the Equal Employment Opportunity Commission or any of its representatives alleging that either of the Defendants had discriminated in any manner against her or any other persons.

to file an application for employment.

Robert T. Thompson

Homer L. Deakins, Jr.

The Daniel Building
Greenville, S. C. 29602

Attorneys for Campbell Soup Company
(Sumter Plant) Inc.

Good!

Dayle Chandler
LBW

APPLICATION FOR EMPLOYMENT

CAMPBELL SOUP COMPANY — (SUMTER PLANT) INC.

AN EQUAL OPPORTUNITY EMPLOYER

LIST NOTHING WHICH WOULD INDICATE NATIONAL ORIGIN, RACE, CREED OR COLOR

PERSONAL

Date 8/17/66 Social Security Number 057-14-4317

Name KINGWOOD (Please Print Name) Idell (Last) P. (First) (Middle)

Address Route 5, Box 160-D (Street & Number) Sumter (City) S.C. (Zone) Telephone 775-3115 State

Male ____ Female ✓ Age 47 Date of Birth 5-12-1919 (Month, Day, Year) Are you a Citizen? Yes ✓ No ____

Marital Status: Single ____ Divorced ____ Married ____ Widow(er) ✓ No. of Children ____

Height 5'9 Weight 150 Is anyone dependent upon you for support? Yes Who? Mother

What relatives do you have in our employ? None (Name and Relationship)

Have you ever been employed by this Company? No (Yes or No) If Yes, From ____ To ____

In case of emergency notify ANNIE L. PRINGLE Address Route 5, Box 160-D Sumter S.C. Telephone 775-3115

List any Physical Defects or Serious Illnesses None

Shift Preferred DAYS Date Available At ANY time

Position Desired No SPECIAL Pay Expected $1.50 per HR How were you recommended to us?

STATE EMPLOYMENT SERVICE

PREVIOUS EMPLOYMENT

(List Most Recent Job First)

EXPERIENCE

COMPANY	TYPE OF WORK PERFORMED	DATE EMPLOYED	REASON FOR LEAVING	SALARY
GENERAL Foods (Name) 154 Bloom St. (Address) Hoboken N.J. (City & State)	ASSEMLY AS AN PACKER + OPRATER	From 5-12-54 To 3-61	COMPANY move to ANOTHER State	$2.17 HOURLY
COLGATE PALMOLIVE (Name) 105 Hudson St (Address) Jersey City NJ (City & State)	PACKER + AUTOMATIC BUTTON DENTAL CREAM	From 4-3-61 To 4-23-66	I RETURN Home to BE NEAR MY ELDERY PARENTS	$2.50 HOURLY
(Name) (Address) (City & State)		From ____ To ____		

EDUCATION

EDUCATION	NAME OF SCHOOL AND LOCATION	DATES ATTENDED	GRADE AVERAGE	HIGHEST GRADE COMPLETED
Grade School	CONCRYITY SUMTER COUNTY	IN THE 30's	PASSING	
High School	MAYESVILLE EAST	FROM 1934 TO 1935	PASSING	10th
College or University				
Correspondence or Other				

Have you ever been arrested? NO If yes, list dates and places: _____

Are you now or have you ever been a member of the Communist Party? No V Yes _____

Are you now or have you ever been a member of any party or associated with any group which advocates the overthrow of the government of the United States? _____

Are you now or have you ever been a member of or associated with any organization which has been declared to be subversive by the Attorney General of the United States? Yes _____ No V.

If the answer to any of the above is Yes, please explain fully: _____

Have you ever received Workmen's Compensation for any disability incurred in previous employment? NO

If yes, please explain: _____

Military Service: Branch _____ Date Inducted _____ Date of Discharge _____

Grade or Rank _____ Military Job _____ Type of Discharge _____

Give three character references. Do not include relatives and former employers.

Name _____ Address _____

Name _____ Address _____

Name _____ Address _____

I agree to submit a birth certificate or other evidence to substantiate my age. I have rechecked this application for errors and understand that the furnishing of misinformation or the withholding of information may subject me to immediate dismissal.

Witness _____ Signature Edith C. Pickerstrod

DO NOT WRITE BELOW THIS LINE

Medical Exam: Passed _____ Rejected _____ Restrictions: _____ Date _____ Dr's. Initials: _____

DATE	DEPARTMENT	POSITION	RATE	REMARKS

WONDERLIC

PERSONNEL TEST

FORM I

NAME Jack P. Kingwood (Please Print) Date Sept 19-1966

READ THIS PAGE CAREFULLY. DO EXACTLY AS YOU ARE TOLD.
DO NOT TURN OVER THIS PAGE UNTIL YOU ARE
INSTRUCTED TO DO SO.

This is a test of problem solving ability. It contains various types of questions. Below is a sample question correctly filled in:

REAP is the opposite of

1 obtain, 2 cheer, 3 continue, 4 exist, 5 sow ..... [5]

The correct answer is "sow." (It is helpful to underline the correct word.) The correct word is numbered 5. Then write the figure 5 in the brackets at the end of the line.

Answer the next sample question yourself.

Gasoline sells for 23 cents per gallon. What will 4 gallons cost? ..... [92]

The correct answer is 92¢. There is nothing to underline so just place "92¢" in the brackets.

Here is another example:

MINER MINOR — Do these words have

1 similar meaning, 2 contradictory, 3 mean neither same nor opposite? ..... [3]

The correct answer is "mean neither same nor opposite" which is number 3 so all you have to do is place a figure "3" in the brackets at the end of the line.

When the answer to a question is a letter or a number, put the letter or number in the brackets.
All letters should be printed.

This test contains 50 questions. It is unlikely that you will finish all of them, but do your best. After the examiner tells you to begin, you will be given exactly 12 minutes to work as many as you can. Do not go so fast that you make mistakes since you must try to get as many right as possible. The questions become increasingly difficult, so do not skip about. Do not spend too much time on any one problem. The examiner will not answer any questions after the test begins.

Now, lay down your pencil and wait for the examiner to tell you to begin!

Do not turn the page until you are told to do so.

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Published by E. F. Wonderlic, P. O. Box 7, Northfield, Illinois. All rights reserved, including the right to reproduce this test or any part thereof in any form by mimeograph, hectograph, or in any other way, whether the reproductions are sold or are furnished free for use.

PRINTED IN U.S.A.

Form 1

1. The Eleventh month of the year is
   1 October, 2 May, 3 November, 4 February ..... [3]
2. SEVERE is the opposite of
   1 harsh, 2 stern, 3 tender, 4 rigid, 5 unyielding ..... [2]
3. In the following set of words, which word is different from the others?
   1 certainty, 2 dubiousness, 3 assuredness, 4 confidence, 5 sureness ..... [ ]
4. Answer by printing YES or NO. Does B.C. mean "before Christ"? ..... [ ]
5. In the following set of words, which word is different from the others?
   1 sing, 2 call, 3 chatter, 4 hear, 5 speak ..... [5]
6. PURE is the opposite of
   1 immaculate, 2 indecent, 3 incorrupt, 4 innocent, 5 classical ..... [6]
7. Which word below is related to chew as smell is to nose?
   1 sweet, 2 stink, 3 odor, 4 teeth, 5 clean ..... [4]
8. How many of the five pairs of items listed below are exact duplicates? ..... [ ]

Sharp, M. G.	Sharpe, M. G.
Fiedler, E. H.	Fiedler, E. H.
Connor, M. J.	Conner, M. J.
Woesner, O. W.	Woerner, O. W.
Soderquist, P. E.	Soderquist, B. E.

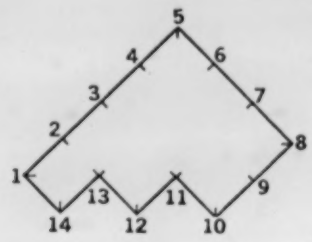
9. CLEAR is the opposite of
   1 plain, 2 obvious, 3 explicit, 4 distinct, 5 dim ..... [9]
10. A dealer bought some cars for $3500. He sold them for $5500, making $50 on each car. How many cars were involved? ..... [ ]
11. ADOPT ADEPT — Do these words have
    1 similar meanings, 2 contradictory, 3 mean neither same nor opposite? ..... [3]
12. Lemons sell at 3 for 15 cents. How much will 1½ dozens cost? ..... [4]
13. How many of the six pairs of items listed below are exact duplicates? ..... [ ]

5296	5296
66986	69686
834426	834426
7354256	7354256
61197172	61197172
83238324	83238234

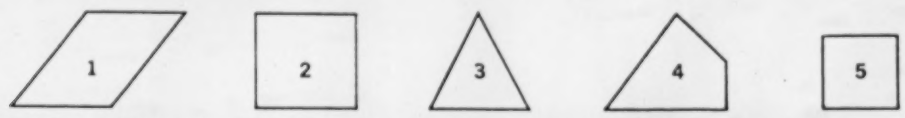
14. FAMILIAR is the opposite of
    1 friendly, 2 old, 3 strange, 4 aloof, 5 different ..... [14]
15. Which number in the following group of numbers represents the smallest amount?
    6 .7 9 36 .31 5 ..... [ ]
16. Suppose you arranged the following words so that they made a true statement. Then print the last letter of the last word as the answer to this problem.
    of salt the life Love is ..... [ ]
17. One of the numbered figures in the following drawings is most different from the others. What is the number in that drawing? ..... [ ]

18. Two men caught 36 fish; X caught 8 times as many as Y. How many fish did Y catch? ..... [ ]
19. REFLECT REFLEX — Do these words have
    1 similar meanings, 2 contradictory, 3 mean neither same nor opposite? ..... [ ]
20. Suppose you arrange the following words so that they make a complete sentence. If it is a true statement, mark (T) in the brackets, if false, put an (F) in the brackets.
    moss A stone gathers rolling ..... [ ]
21. Assume the first 2 statements are true. Is the final one: (1)true, (2)false, (3)not certain?
    Most progressives are business men. Most progressives are Republicans. Some business men are Republicans. ..... [ ]
22. Two of the following proverbs have similar meanings. Which ones are they? ..... [ ]
    1. Straws show which way the wind blows.
    2. An empty sack can't stand straight.
    3. No doctor at all is better than three.
    4. All is not gold that glitters.
    5. Too many cooks spoil the broth.
23. Look at the row of numbers below. What number should come next?
    73 66 59 52 45 38 ? ..... [ ]
24. The hours of daylight and darkness in SEPTEMBER are nearest equal to the hours of daylight in 1 June, 2 March, 3 May, 4 November ..... [ ]
25. Assume the first 2 statements are true. Is the final one: (1)true, (2)false, (3)not certain?
    Bill is the same age as Mary. Mary is younger than John. Bill is younger than John [ ]
26. A train travels 75 feet in ¼ second. At this same speed, how many feet will it travel in 5 seconds? ..... [ ]
27. Five pounds of meat sells for $2.00; how many pounds can you buy for 80 cents? ..... [ ]
28. STRETCH SPREAD — Do these words have
    1 similar meanings, 2 contradictory, 3 mean neither same nor opposite? ..... [ ]

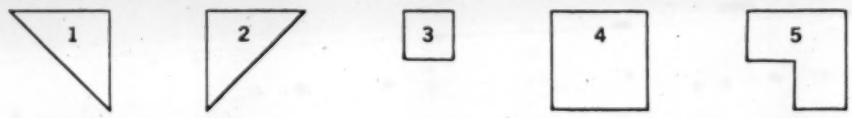
29. This geometric figure can be divided by a straight line into two parts which will fit together in a certain way to make a perfect square. Draw such a line by joining two of the numbers. Then write the numbers as the answer. ..... [___]



30. Assume the first 2 statements are true. Is the final one: (1)true, (2)false, (3)not certain?
Fred greeted Mary. Mary greeted Ned. Fred did not greet Ned. ..... [___]
31. An automobile that costs $2490 has decreased 33⅓% in value by the end of the season. What was its value at that time? ..... [___]
32. One of the numbered figures in the following drawings is most different from the others. What is the number in that drawing? ..... [___]



33. A skirt requires 2⅓ yards of material. How many can be cut from 42 yards? ..... [___]
34. Are the meanings of the following sentences: 1 similar, 2 contradictory, 3 neither similar nor contradictory? No doctor at all is better than three. The more doctors, the more sickness. [___]
35. ENLARGE AGGRANDIZE — Do these words have
1 similar meanings, 2 contradictory, 3 mean neither same nor opposite? ..... [___]
36. Are the meanings of the following sentences: 1 similar, 2 contradictory, 3 neither similar nor contradictory? It is always well to moor your ship with two anchors. Don't put all of your eggs in one basket. ..... [___]
37. For $3.60 a grocer buys a case of oranges which contains 12 dozen. He knows that two dozen will spoil before he sells them. At what price per dozen must he sell the good ones to gain ⅓ of the whole cost? ..... [___]
38. PRETENSIONS PRETENTIOUS — Do these words have
1 similar meanings, 2 contradictory, 3 mean neither same nor opposite? ..... [___]
39. When potatoes are selling at $.0125 a pound, how many pounds can you buy for fifty cents? [___]
40. One number in the following series does not fit in with the pattern set by the others. What should that number be? ¼ ⅛ ⅛ ¼ ⅛ ⅛ ¼ ⅛ ⅙ ..... [___]
41. IMAGE IMAGINARY — Do these words have
1 similar meanings, 2 contradictory, 3 mean neither same nor opposite? ..... [___]
42. How many square yards are there in a floor which is 6 feet long by 21 feet wide? ..... [___]
43. Are the meanings of the following sentences: 1 similar, 2 contradictory, 3 neither similar nor contradictory? All good things are cheap, all bad things very dear. Goodness is simple; badness is manifold. ..... [___]
44. A soldier shooting at a target hits it 12½% of the time. How many times must he shoot to be certain he will register 100 hits? ..... [___]
45. One number in the following series does not fit in with the pattern set by the others. What should that number be? ¼ ⅙ ⅛ ⅑ 1/12 1/14 ..... [___]
46. Three men form a partnership and agree to divide the profits equally. X invests $4500, Y invests $3500, Z invests $2000. If the profits are $2400, how much less does X receive than if the profits were divided in proportion to the amount invested? ..... [___]
47. Two of the following proverbs have similar meaings. Which ones are they? ..... [___]
1. Perfect valor is to do without witnesses what one would do before all the world.
2. Valor and boastfulness never buckle on the same sword.
3. The better part of valor is discretion.
4. True valor lies in the middle between cowardice and rashness.
5. There is a time to wink as well as to see.
48. Are the meanings of the following sentences: 1 similar, 2 contradictory, 3 mean neither similar nor contradictory? After the event even a fool is wise. No man ever became wise by chance. ..... [___]
49. Three of the following 5 parts can be fitted together in such a way to make a triangle. Which 3 are they? ..... [___]



50. In printing an article of 24,000 words, a printer decides to use two sizes of type. Using the larger type, a printed page contains 900 words. Using the smaller type, a page contains 1200 words. The article is allotted 21 full pages in a magazine. How many pages must be in the smaller type? ..... [___]

CHARGE OF DISCRIMINATION

(Under Title VII of the Civil Rights Act of 1964)

This form is to be used only to file a charge of discrimination based on RACE, COLOR, RELIGION, SEX, or NATIONAL ORIGIN.

MAIL TO: Equal Employment Opportunity Commission
~~1800 G Street, N. W.~~
~~Washington, D. C. 20506~~ ATLANTA REGIONAL OFFICE
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
1770 PEACHTREE STREET, N. W.
ATLANTA, GEORGIA 30309

Case File No;

(please print or type)

1

YOUR NAME: Mrs. Idell P. Kingwood — PHONE NUMBER:

STREET ADDRESS: Route 5, Box 160-D

CITY: ~~Sumter~~ — STATE: South Carolina — ZIP CODE:

2 WAS THE DISCRIMINATION BECAUSE OF: (please check one)

- [X] Race or Color
- [ ] Religious creed
- [ ] National origin
- [ ] Sex

(specify) Negro

3 Who discriminated against you? Give the name and address of the employer, labor organization, employment agency and/or apprenticeship committee. If more than one, list all.

NAME: ~~Campbell Soup Company~~

STREET ADDRESS: ~~Sumter, S. C.~~

CITY: _____ STATE: _____ ZIP CODE: _____

AND (other parties if any): _____

4 Have you filed this charge with a state or local government agency? [ ] Yes [X] ~~No~~

5 If your charge is against a company or a union, how many employees or members? Number [X] Do Not Know

6 The most recent date on which this discrimination took place: Month MAY Day _____ Year 1966

7. Explain what unfair thing was done to you:

I applied for employment at Campbell Soup Company and have not been hired.

I believe that the Campbell Company refused and failed to hire me on the basis of my race as numerous white persons have been hired since my application was filed.

Dept. Eq. Employ. Oppor. Asst. Dir.

(use other side of this page if necessary)

8 I SWEAR OR AFFIRM THAT I HAVE READ THE ABOVE CHARGE AND THAT IT IS TRUE TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

DATE Jan 10, 1967 — Idell P. Kingwood (SIGN HERE)

Subscribed and sworn to before me this 10 day of January 1967

Charles T. Wilson (NAME) — Equal Employment Officer (TITLE)

[1968, March 5]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

IDELL D. KINGWOOD, et al., Plaintiffs, v. CAMPBELL SOUP COMPANY, INC., A New Jersey Corporation, et al., Defendants.	CIVIL ACTION NO. 67-167 REQUEST FOR ADMISSIONS

Campbell Soup Company (Sumter Plant) Inc., hereinafter called this Defendant, requests Ethel Mae Burgess, hereinafter called this Plaintiff, within 10 days after service of this request, to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

1. That each of the following documents, which are exhibited with this request and will again be produced for inspection upon reasonable request at the office of this Defendant's attorneys on any day within 10 days after the service of this request, is genuine:

a. Application for Employment dated 6-12-66 and signed Ethel Mae Burgess, a copy of which is annexed hereto. This document is the application for employment filed by this Plaintiff with this Defendant on June 12, 1966.

b. Petition to Chairman, Equal Employment Opportunity Commission, dated October 4, 1966, signed by Ethel Mae Burgess, among others. This is a document which was signed by this Plaintiff, and other persons, during a meeting held in Sumter, South Carolina, on October 4, 1966.

2. That each of the following statements is true:

a. The said application for employment, exhibited with this request, was filed by this Plaintiff with this Defendant on June 12, 1966, and is the only written application for employment filed by this Plaintiff with either of the Defendants.

b. The said Petition, exhibited with this request, was filed by or on behalf of this Plaintiff with the Equal Employment Opportunity Commission in Washington, D. C., sometime in October, 1966.

c. The said Petition, exhibited with this request, was not sworn to by this Plaintiff.

d. With the exception of the said Petition, exhibited with this request, this Plaintiff did not file any type of unfair employment practice charge with the Equal Employment Opportunity Commission or any of its representatives against either of the Defendants at any time prior to the institution of this proceeding.

e. This Plaintiff has never been denied permission by either of the Defendants or any of their representatives to file an application for employment.

Robert T. Thompson

Homer L. Deakins, Jr.

The Daniel Building
Greenville, S. C. 29602

Attorneys for Campbell Soup Company
(Sumter Plant) Inc.

(Dft Cert for Ident Clerk)

APPLICATION FOR EMPLOYMENT

CAMPBELL SOUP COMPANY — (SUMTER PLANT) INC.

AN EQUAL OPPORTUNITY EMPLOYER

LIST NOTHING WHICH WOULD INDICATE NATIONAL ORIGIN, RACE, CREED OR COLOR

PERSONAL

Date 6-12-1966. Social Security Number 250-62-2600

Name Burgess Ethel Mae
(Please Print Name) (Last) (First) (Middle)

Address RD 1 Box 95 A Columbia SC Telephone
(Street & Number) (City) (Zone) State

Male ____ Female Female Age 39 Date of Birth August 26. 1926 Are you a Citizen? Yes yes No ____
(Month, Day, Year)

Marital Status: Single ____ Divorced ____ Married yes Widow(er) ____ No. of Children 3 (D 1-6)

Height 5' 6½" Weight 126 Is anyone dependent upon you for support? yes Who? ____

What relatives do you have in our employ? ____
(Name and Relationship)

Have you ever been employed by this Company? no (Yes or No) If Yes, From ____ To ____

In case of emergency notify Hallie Burgess Address Al Colu & C RD 1 Box 95- Telephone ____

List any Physical Defects or Serious Illnesses None

Shift Preferred Any Date Available any Date

Position Desired ____ Pay Expected ____ How were you recommended to us?

EXPERIENCE

PREVIOUS EMPLOYMENT

(List Most Recent Job First)

COMPANY	TYPE OF WORK PERFORMED	DATE EMPLOYED	REASON FOR LEAVING	SALARY
t.m. Frawon (Name) 336 Manning St (Address) (City & State)	MAID	From 10 To ____ years.	physical ... needs.	$16.00 wkly
(Name) (Address) (City & State)		From ____ To ____		
(Name) (Address) (City & State)		From ____ To ____		

EDUCATION

EDUCATION	NAME OF SCHOOL AND LOCATION	DATES ATTENDED	GRADE AVERAGE	HIGHEST GRADE COMPLETED
Grade School	10			10th
High School	Manning Training School			
College or University				
Correspondence or Other	M+S			

Have you ever been arrested? No If yes, list dates and places: _____

Are you now or have you ever been a member of the Communist Party? No _____ Yes _____

Are you now or have you ever been a member of any party or associated with any group which advocates the overthrow of the government of the United States? _____

Are you now or have you ever been a member of or associated with any organization which has been declared to be subversive by the Attorney General of the United States? Yes _____ No _____.

If the answer to any of the above is Yes, please explain fully: _____

Have you ever received Workmen's Compensation for any disability incurred in previous employment? _____

If yes, please explain: _____

Military Service: Branch _____ Date Inducted _____ Date of Discharge _____

Grade or Rank _____ Military Job _____ Type of Discharge _____

Give three character references. Do not include relatives and former employers.

Name Willie Burke Address Hale . D.C.

Name Alden Burke Address Hale . D.C.

Name George Jones Address Hale . D.C.

I agree to submit a birth certificate or other evidence to substantiate my age. I have rechecked this application for errors and understand that the furnishing of misinformation or the withholding of information may subject me to immediate dismissal.

Witness _____ Signature ETHEL MAE BURGESS

DO NOT WRITE BELOW THIS LINE

Medical Exam: Passed _____ Rejected _____ Restrictions: _____ Date _____ Dr's. Initials: _____

DATE	DEPARTMENT	POSITION	RATE	REMARKS

PETITION:

To: Chairman, Equal Employment Opportunity Commission

We, and each of us, the undersigned have found on many occasions that the SWANSON FROZEN FOOD DIVISION, of the Campbell Soup Company Located at Sumter, South Carolina practices discrimination Toward Negroes and Toward me the undersigned in the screening and placement on JOBS NOW Available and WERE AVAILABLE SINCE the Company Came To Sumter. Because this Company used and USES the South CAROLINA Employment SECURITY COMMISSION To receive our applications, we are Subjected To discrimination because that Commission has been found To act with discrimination towards Negroes - delayed referrals or no referrals. We, and each of us, want this Company's Division Investigated and some effort made To get us more of the Jobs there.

Dated: October 4, 1966.

Signed:

	NAME	Address:
AFC-10-747	1. Lillie Mae Pitts	413 Pinewood Road
748	2. Alice Jackson	44 S. St. Sumter
749	3. Annie Mae Goings	135 Mitchell St
750	4. Mary Lue Lucas	R 1 Box 101 Alcolu, S.C.

Page one of three Pages

Equal Opportunity Commission

	Name	Address:
AT 6-10-751	1. Virginia Burgess	R.F.D. 3, Box 338-B Sumter, S.C.
752	2. Mrs Wilkes C Ipers	526 So. Sumter St
753	3. Mrs. Ruth D. Knight	% Jackson ave
754	4. Mrs Ola mae Jones	Route 2 Box 51C
755	5. Mrs Phoebe Davis	71 B 117 a Alcolu S.C.
756	6. Miss Gladys Romeo	P.O. Box 163 Pinewood, S.C.
757	7. Mrs. Debois Bailey	Rural Post Office Pinewood S.C.
758	8. Mrs Catherine Braxton	Rt 2 Box 181
759	9. Mary Blondin	Rural 1 Box 94
760	10. Mrs. Margaret Elizabeth Knight	R.F.D. 5 Box 86-A Sumter,
761	11. Mrs Hettie mae McCoy	Rte 1, Box 238-A Sumter
762	12. Miss Odette M. Braxton	Rte 2 Box 181 Monning
763	13. Mrs Mary E. Hicks	Rte 2 box 177 Monning S.C.
764	14. Mrs Mary McCants	Rte 1 Box 90-B Olanta S.C.
765	15. Mrs Evelyn Dorsey	Olanta S.C. Route Box 96-
766	16. Nora N. Perry	Pinewood S.C.,
767	17. Ethelmae Burgess	R.D. 1 Box 55 Olanta S.C.
768	18. Carrie Mae Dorsey	Olanta S.C. B. 86 191
769	19. Lucia Bracey	Pinewood S.C.
770	20. Mrs Nita Brunson	R.2 Box 211-A Pinewood S.C.
771	22. Mr Silas walker Jr	R 1 Box 110 Galivants
772	23. Annie L. Parker	202 Broad St.
773	24. Mamie Lee Mickel	

Dated: October 4, 1966

I, Dorothy V. Sampson do certify That I personally saw each of the subscribers sign his or her name to this petition on the date above noted.

Dorothy V. Sampson
39 Washington Street
Sumter, S. Carolina.

[1968, March 5]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

IDELL D. KINGWOOD, et al., Plaintiffs, v. CAMPBELL SOUP COMPANY, INC., A New Jersey Corporation, et al., Defendants.	CIVIL ACTION NO. 67-167 REQUEST FOR ADMISSIONS

Campbell Soup Company (Sumter Plant) Inc., hereinafter called this Defendant, requests Sallie Burgess, hereinafter called this Plaintiff, within 10 days after service of this request, to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

1. That the following document, which is exhibited with this request and will again be produced for inspection upon reasonable request at the office of this Defendant's attorneys on any day within 10 days after the service of this request, is genuine:

a. Application for Employment dated March and signed Sallie Burgess, a copy of which is annexed hereto. This document is the application for employment filed by this Plaintiff with this Defendant sometime in March, 1966.

2. That each of the following statements is true:

a. That the said application for employment exhibited with this request, was filed by this Plaintiff with this Defendant sometime in March, 1966, and is the only written application for employment filed by this Plaintiff with either of the Defendants.

b. This Plaintiff did not sign any petition to the Chairman of the Equal Employment Opportunity Commission dated October 4, 1966.

c. Prior to the institution of this proceeding, this Plaintiff had not sworn to any written document addressed to the Equal Employment Opportunity Commission or any of its representatives alleging that either of the Defendants had discriminated in any manner against her or any other persons.

d. Prior to the institution of this proceeding, this Plaintiff had not served, or caused to be served, upon either of the Defendants any written document addressed to the Equal Employment Opportunity Commission or any of its representatives alleging that either of the Defendants had discriminated in any manner against her or any other person.

e. This Plaintiff has never completed the eighth grade at any school.

f. A manual dexterity test was administered to this Plaintiff by representatives of the South Carolina Employment Security Commission sometime in April 1966, and she was advised by a representative of the said South Carolina Employment Security Commission that she had failed to pass the said test.

g. This Plaintiff has never received any introduction card to this Defendant from the South Carolina Employment Security Commission.

h. This Plaintiff has never been denied permission by either of the Defendants or any of their representatives to file an application for employment.

Robert T. Thompson

Homer L. Deakins, Jr.

Attorneys for Campbell Soup Company (Sumter Plant) Inc.

The Daniel Building
Greenville, S. C. 29602

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APPLICATION FOR EMPLOYMENT

CAMPBELL SOUP COMPANY — (SUMTER PLANT) INC.

AN EQUAL OPPORTUNITY EMPLOYER

LIST NOTHING WHICH WOULD INDICATE NATIONAL ORIGIN, RACE, CREED OR COLOR

PERSONAL

Date March Social Security Number 249-56-6246

Name Burgess (Last) Sallie (First) (Middle) (Please Print Name)

Address 207 Webb Ave. (Street & Number) Sumter (City) S.C. (Zone) (State) Telephone 775-3775

Male ____ Female ✓ Age 47 Date of Birth Dec. 5, 1919 (Month, Day, Year) Are you a Citizen? Yes ✓ No ____

Marital Status: Single ____ Divorced ____ Married ✓ Widow(er) ____ No. of Children 6 (27-12)

Height ____ Weight 155 Is anyone dependent upon you for support? No Who? ____

What relatives do you have in our employ? None (Name and Relationship)

Have you ever been employed by this Company? No (Yes or No) If Yes, From ____ To ____

In case of emergency notify James Burgess Address 207 Webb Ave. Telephone 775-3775

List any Physical Defects or Serious Illnesses None

Shift Preferred Day Shift 1st or 2nd Date Available Whenever Plant open.

Position Desired Any Pay Expected ____ How were you recommended to us?

Friends

PREVIOUS EMPLOYMENT

(List Most Recent Job First)

EXPERIENCE

COMPANY	TYPE OF WORK PERFORMED	DATE EMPLOYED	REASON FOR LEAVING	SALARY
(Name) ____ (Address) ____ (City & State) ____	____	From ____ To ____	____	____
(Name) Sumter Sanitation Dept (Address) Bet St Chesterfield (City & State) Sumter & Turkey	____	From 1952 To 1957	No transportation. Don't Remember	____
(Name) ____ (Address) ____ (City & State) ____	____	From ____ To ____	____	____

EDUCATION

EDUCATION	NAME OF SCHOOL AND LOCATION	DATES ATTENDED	GRADE AVERAGE	HIGHEST GRADE COMPLETED
Grade School	St. Michael			8th
High School				
College or University				
Correspondence or Other				

Have you ever been arrested? No If yes, list dates and places: _____

Are you now or have you ever been a member of the Communist Party? No No Yes _____

Are you now or have you ever been a member of any party or associated with any group which advocates the overthrow of the government of the United States? No

Are you now or have you ever been a member of or associated with any organization which has been declared to be subversive by the Attorney General of the United States? Yes No No.

If the answer to any of the above is Yes, please explain fully: _____

Have you ever received Workmen's Compensation for any disability incurred in previous employment? _____

If yes, please explain: _____

Military Service: Branch _____ Date Inducted _____ Date of Discharge _____

Grade or Rank _____ Military Job _____ Type of Discharge _____

Give three character references. Do not include relatives and former employers.

Name Mrs. Juritha Singleton Address 913 Webb Ave.

Name Mrs. Bessie Brown Address 1014 Belmont Dr.

Name Mrs. Lillie Davis Address 274 East Red Bay Road

I agree to submit a birth certificate or other evidence to substantiate my age. I have rechecked this application for errors and understand that the furnishing of misinformation or the withholding of information may subject me to immediate dismissal.

Witness _____ Signature Dallie Burgess

DO NOT WRITE BELOW THIS LINE

Medical Exam: Passed _____ Rejected _____ Restrictions: _____ Date _____ Dr's. Initials: _____

DATE	DEPARTMENT	POSITION	RATE	REMARKS

[1968, March 5]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

IDELL D. KINGWOOD, et al., Plaintiffs, v. CAMPBELL SOUP COMPANY, INC., A New Jersey Corporation, et al., Defendants.	CIVIL ACTION NO. 67-167 REQUEST FOR ADMISSIONS

Campbell Soup Company (Sumter Plant) Inc., hereinafter called this Defendant, requests Virginia Burgess, hereinafter called this Plaintiff, within 10 days after service of this request, to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

1. That each of the following documents, which are exhibited with this request and will again be produced for inspection upon reasonable request at the office of this Defendant's attorneys on any day within 10 days after the service of this request, is genuine:

a. Application for Employment dated 3-8-66 and signed Mrs. Virginia Johnnie Burgess, a copy of which is annexed hereto. This document is the application for employment filed by this Plaintiff with this Defendant on March 8, 1966.

b. Petition to Chairman, Equal Employment Opportunity Commission, dated October 4, 1966, signed by Virginia Burgess, among others. This is a document which was signed by this Plaintiff, and other persons, during a meeting held in Sumter, South Carolina, on October 4, 1966.

2. That each of the following statements is true:

a. The said Application for Employment, exhibited with this request, was filed by this Plaintiff with this Defendant on March 8, 1966, and is the only written application for employment filed by this Plaintiff with either of the Defendants.

b. The said Petition, exhibited with this request, was filed by or on behalf of this Plaintiff with the Equal Employment Opportunity Commission in Washington, D. C., sometime in October, 1966.

c. The said Petition, exhibited with this request, was not sworn to by this Plaintiff.

d. With the exception of the said Petition, exhibited with this request, this Plaintiff did not file any type of unfair employment practice charge with the Equal Employment Opportunity Commission or any of its representatives against either of the Defendants at any time prior to the institution of this proceeding.

e. This Plaintiff has never been denied permission by either of the Defendants or any of their representatives to file an application for employment.

f. This Plaintiff has never completed the eighth grade in any school.

Robert T. Thompson

Homer L. Deakins, Jr.

Attorneys for Campbell Soup Company
(Sumter Plant) Inc.

The Daniel Building
Greenville, S. C. 29602

Dupt Exp'd for Adv.

APPLICATION FOR EMPLOYMENT

CAMPBELL SOUP COMPANY — (SUMTER PLANT) INC.

AN EQUAL OPPORTUNITY EMPLOYER

LIST NOTHING WHICH WOULD INDICATE NATIONAL ORIGIN, RACE, CREED OR COLOR

PERSONAL

Date 3-8-61 Social Security Number 248-58-3654

Name Burgess Mabel Virginia Johnnie
(Please Print Name) (Last) (First) (Middle)

Address Rte 5, Box 336-B Sumter, S.C. Telephone 775-4811
(Street & Number) (City) (Zone) State

Male ____ Female ✓ Age 32 Date of Birth 1-22-34 Are you a Citizen? Yes ✓ No ____
(Month, Day, Year)

Marital Status: Single ____ Divorced ____ Married ✓ Widow(er) ____ No. of Children 4 (14-8)

Height 5-3 Weight 150 Is anyone dependent upon you for support? yes Who? Children

What relatives do you have in our employ? none
(Name and Relationship)

Have you ever been employed by this Company? no If Yes, From ____ To ____
(Yes or No) - Williams Furniture

In case of emergency notify Jessie Burgess Address Rte 5 Box 336-B Telephone 775-4811

List any Physical Defects or Serious Illnesses none

Prefer 2nd 1st 2nd

Shift Preferred any Time P.M. Date Available any day

Position Desired any Pay Expected $ 2 / hr How were you recommended to us?

EXPERIENCE

PREVIOUS EMPLOYMENT

(List Most Recent Job First)

COMPANY	TYPE OF WORK PERFORMED	DATE EMPLOYED	REASON FOR LEAVING	SALARY
Big Apple (Name) B.M.St (Address) Sumter (City & State)	Kitchen Helper	From 1960 To 61	Dumbarton work	$1.61
Oomes Inc (Name) Work (Address) (City & State)		From ____ To ____		
(Name) (Address) (City & State)		From ____ To ____		

EDUCATION

EDUCATION	NAME OF SCHOOL AND LOCATION	DATES ATTENDED	GRADE AVERAGE	HIGHEST GRADE COMPLETED
Grade School				
High School	Lincoln H.S.		C. ~~70's~~	10th
College or University				
Correspondence or Other				

Have you ever been arrested? No If yes, list dates and places: _____

Are you now or have you ever been a member of the Communist Party? No No Yes _____

Are you now or have you ever been a member of any party or associated with any group which advocates the overthrow of the government of the United States? No

Are you now or have you ever been a member of or associated with any organization which has been declared to be subversive by the Attorney General of the United States? Yes _____ No No.

If the answer to any of the above is Yes, please explain fully: _____

Have you ever received Workmen's Compensation for any disability incurred in previous employment? _____

If yes, please explain: _____

Military Service: Branch _____ Date Inducted _____ Date of Discharge _____

Grade or Rank _____ Military Job _____ Type of Discharge _____

Give three character references. Do not include relatives and former employers.

Name Mr Bobby Richardson Address 117 Adams St Sumter, S.C.

Name [illegible] Address _____

Name Mr Big Jims Address Sumter, S.C.

I agree to submit a birth certificate or other evidence to substantiate my age. I have rechecked this application for errors and understand that the furnishing of misinformation or the withholding of information may subject me to immediate dismissal.

Witness _____ Signature Mrs Virginia Burgess

DO NOT WRITE BELOW THIS LINE

Medical Exam: Passed _____ Rejected _____ Restrictions: _____ Date _____ Dr's. Initials: _____

DATE	DEPARTMENT	POSITION	RATE	REMARKS

PETITION:

To: Chairman, Equal Employment Opportunity Commission

We, and each of us, the undersigned have found on many occasions that the SWANSON FROZEN FOOD DIVISION, of the Campbell Soup Company Located at Sumter, South Carolina practices discrimination Toward Negroes and Toward me the undersigned in the screening and placement on JOBS NOW Available. and WERE AVAILABLE SINCE the Company Came To Sumter. Because this Company used and USES the South CAROLINA Employment SECURITY COMMISSION to receive our applications, we are subjected to discrimination because that Commission has been found To act with discrimination towards Negroes - delayed referals or no referals. We, and each of us, want this Company's Division INVESTIGATED and some effort made To get us more of the Jobs there.

Dated: October 4, 1966.

Signed:

		NAME	Address:
AFC-10-747	1.	Lydia Mae Pitts	413 Priemood Road
748	2.	Alice Dockson	144 S. Sumter
749	3.	Annie Mae Goings	515 Mcdowell St
750	4.	Mary Lee Lican	R 11 Box 101 Shaw S.C.

Page one of three Pages

Page two of three Pages

		Name	Address:
Pet 6-10-751	1.	Mrs Virginia Burgess	Rt 5, Box 378-B Sumter, S.C.
	752	2. Mrs Wilkes C Jones	526 W. Sumter St
	753	3. Mrs. Ruth D. Knight	% Timberlane
	754	4. Mrs Della mae Jones	Rute 2 Box 51C
	755	5. Mrs Phoebe Davis	% 1 B 117 a Alcalove
	756	6. Miss Gladys Romeo	P.O. Box 163 Pinewood S.C
	757	7. Mrs. Delois Bailford	Box Office Pinewood S.C.
	758	8. Mrs Cathrine Mixton	Mt Dr Box 181
	759	9. Mary Blondin	Routh 1 Box 94
	760	10. Mrs. Margaret Elizabeth Knight	Rt 5 Box 86-A Sumter,
	761	11. Mrs Hattie mae McCoy	Rte 6, Box 238-A Sumter
	762	12. Miss Idabae L. Rivers	Rte 2 Box 181 Manning
	763	13. Mrs. Mary E. Hicks	Rte 2 box 177 Manning S.C.
	764	14. Mrs Mary McCants	Rte 1 Box 90-B Alcola S.C
	765	15. Mrs Evelyn Dawsey	Alcola S.C Route 1 box 196-
	766	16. Nora M. Perry	Pinewood S.C.,
	767	17. Ethel mae Burgess	RD 1 Box 55 Alcola S.C
	768	18. Carrie Mae Dawsey	Alcola S.C Box 86 R.1
	769	19. Lucie Brazell	Pinewood S.C.
	770	20. Mrs Neta Brunson	R.2 Box 211-A Pinewood S.C.
	771	21. Mr Silas walker Jr	R 1 Box 110 Gable S.C
	772	22. Annie Y Graham	202 Broad St.
	773	24. Mussie Lee Mickel	

Dated: October 4, 1966

I, Dorothy V. Sampson do certify that I personally saw each of the subscribers sign his or her name to this petition on the date above noted.

Dorothy V. Sampson
29 Washington Street
Sumter, S. Carolina.

[1968, March 5]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

IDELL D. KINGWOOD, et al., Plaintiffs, v. CAMPBELL SOUP COMPANY, INC., A New Jersey Corporation, et al., Defendants.	CIVIL ACTION NO. 67-167 REQUEST FOR ADMISSIONS

Campbell Soup Company (Sumter Plant) Inc., hereinafter called this Defendant, requests Carrie Mae Daney, hereinafter called this Plaintiff, within 10 days after service of this request, to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

1. That each of the following documents, which are exhibited with this request and will again be produced for inspection upon reasonable request at the office of this Defendant's attorneys on any day within 10 days after the service of this request, is genuine:

a. Application for Employment dated 5 Mo. 12, 1966 and signed Carrie Mae Daney, a copy of which is annexed hereto. This document is the application for employment filed by this Plaintiff with this Defendant on May 12, 1966.

b. Petition to Chairman, Equal Employment Opportunity Commission, dated October 4, 1966, signed by this Plaintiff, among others. This is a document which was signed by this Plaintiff and other persons during a meeting held in Sumter, South Carolina, on October 4, 1966.

2. That each of the following statements is true:

a. The said Application for Employment, exhibited with this request, was filed by this Plaintiff with the Defendant on May 12, 1966, and is the only written application for employment filed by this Plaintiff with either of the Defendants.

b. The said Petition, exhibited with this request, was filed by or on behalf of this Plaintiff with the Equal Employment Opportunity Commission in Washington, D. C., sometime in October, 1966.

c. The said Petition, exhibited with this request, was not sworn to by this Plaintiff.

d. With the exception of the said Petition, exhibited with this request, this Plaintiff did not file any type of unfair employment practice charge with the Equal Employment Opportunity Commission or any of its representatives against either of the Defendants at any time prior to the institution of this proceeding.

e. This Plaintiff has never been denied permission by either of the Defendants or any of their representatives to file an application for employment.

Robert T. Thompson

The Daniel Building
Greenville, S. C. 29602

Homer L. Deakins, Jr.

Attorneys for Campbell Soup Company
(Sumter Plant) Inc.

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LPDe

APPLICATION FOR EMPLOYMENT

CAMPBELL SOUP COMPANY — (SUMTER PLANT) INC.

AN EQUAL OPPORTUNITY EMPLOYER

LIST NOTHING WHICH WOULD INDICATE NATIONAL ORIGIN, RACE, CREED OR COLOR

PERSONAL

Date 5 Mo. 12, 19 66 Social Security Number 248-66-1946

Name DANEY Carrie Mae
(Please Print Name) (Last) (First) (Middle)

Address ALCOLU, R1. Box 86, S.C. Telephone
(Street & Number) (City) (Zone) State

Male ____ Female X Age 49 Date of Birth Sept 28, 17. Are you a Citizen? Yes Yes No ____
(Month, Day, Year)

Marital Status: Single ____ Divorced ____ Married X Widow(er) ____ No. of Children 14

Height 5.4 Weight 110 Is anyone dependent upon you for support? Yes Who? Children

What relatives do you have in our employ? ____
(Name and Relationship)

Have you ever been employed by this Company? No If Yes, From ____ To ____
(Yes or No)

In case of emergency notify Fleglar Daney Address ALCOLU, S.C. Telephone ____

List any Physical Defects or Serious Illnesses ____

Shift Preferred ANY Date Available ANY DATE

Position Desired ____ Pay Expected ____ How were you recommended to us?

PREVIOUS EMPLOYMENT

(List Most Recent Job First)

EXPERIENCE

COMPANY (Name) / (Address) / (City & State)	TYPE OF WORK PERFORMED	DATE EMPLOYED	REASON FOR LEAVING	SALARY
MRS FLEGLAR MANNING, S.C. Illness	MAID	From 1 yr To 8 MO	PHYSICAL Needs	20.00
(Name) (Address) (City & State)		From ____ To ____		
(Name) (Address) (City & State)		From ____ To ____		

EDUCATION

EDUCATION	NAME OF SCHOOL AND LOCATION	DATES ATTENDED	GRADE AVERAGE	HIGHEST GRADE COMPLETED
Grade School 10	SANTEE, VOSSBURG		B-	
High School				
College or University				
Correspondence or Other				

Have you ever been arrested? NO If yes, list dates and places: _____

Are you now or have you ever been a member of the Communist Party? No ✓ Yes _____

Are you now or have you ever been a member of any party or associated with any group which advocates the overthrow of the government of the United States? NO

Are you now or have you ever been a member of or associated with any organization which has been declared to be subversive by the Attorney General of the United States? Yes _____ No ✓

If the answer to any of the above is Yes, please explain fully: _____

Have you ever received Workmen's Compensation for any disability incurred in previous employment? _____

If yes, please explain: _____

Military Service: Branch _____ Date Inducted _____ Date of Discharge _____

Grade or Rank _____ Military Job _____ Type of Discharge _____

Give three character references. Do not include relatives and former employers.

Name DAVID WILLIAMS Address ALCOLU, S.C.

Name Julia Bryant Address Manning, S.C.

Name Nelson Mars Address ALCOLU, S.C.

I agree to submit a birth certificate or other evidence to substantiate my age. I have rechecked this application for errors and understand that the furnishing of misinformation or the withholding of information may subject me to immediate dismissal.

Witness _____ Signature Carrie Mae Davey

DO NOT WRITE BELOW THIS LINE

Medical Exam: Passed _____ Rejected _____ Restrictions: _____ Date _____ Dr's. Initials: _____

DATE	DEPARTMENT	POSITION	RATE	REMARKS

PETITION:

To: Chairman, Equal Employment Opportunity Commission

We, and each of us, the undersigned have found on many occasions that the SWANSON FROZEN FOOD DIVISION, of the Campbell Soup Company Located at Sumter, South Carolina practices discrimination Toward Negroes and Toward me the undersigned in the screening and placement on JOBS NOW Available and WERE AVAILABLE SINCE the Company Came To Sumter. Because this Company used and USES the SOUTH CAROLINA Employment SECURITY COMMISSION To receive our applications, we are subjected To discrimination because that Commission has been found To act with discrimination towards Negroes - delayed referrals or no referrals. We, and each of us, want this Company's Division Investigated and some effort made To get us more of the Jobs there.

Dated: October 4, 1966.

Signed:

		MAINE	Address:
AFC-10-747	1.	Lydia Mae Pitts	413 Pinewood Road
748	2.	Alice Lee Frazier	44 & 1/2 St. Sumter
749	3.	Annie Mae Billings	15 Mitchell St
750	4.	Mary Lee Lucas	R/1 Box 101 Alcolu, S.C.

Page one of three Pages

	Name	Address:
INT 6-10-751	1. Virginia Burgess	R.F.D. #4 Box 338-B Sumter, S.C.
752	2. Mrs. Wilkes C. Davis	526 So. Sumter St
753	3. Mrs. Ruth D. Wright	1/2 Lynchburg
754	4. Mrs. Ida mae Jones	Route 2 Box 51C
755	5. Mrs. Phoebe Davis	R.F.D. 1 Box 117 Alcolu S.C.
756	6. Miss Gladys Romus	P.O. Box 163 Pinewood S.C.
757	7. Mrs. Delois Baisden	Post Office Pinewood S.C.
758	8. Mrs Cathrine Braxton	Rt 2 Box 181
759	9. Mary Blanding	Route 1 Box 94
760	10. Mrs. Margaret Elizabeth Knight	Rt. 5 Box 86-A Sumter,
761	11. Mrs Hattie mae McCoy	Rte 6 Box 238-A Sumter
762	12. Miss Viola L. Braxton	Rte 2 Box 181 Manning
763	13. Mrs Mary E. Hicks	Rte 2 Box 177 Manning S.C.
764	14. Mrs Mary McCants	Rte 1 Box 90-B Alcolu S.C.
765	15. Mrs Evelyn Davis	Alcolu SC Route 1 Box 96-
766	16. Nora M. Perry	Pinewood S.C.
767	17. Ethel mae Burgess	R.D. 1 Box 57 Alcolu SC
768	18. Carrie Mae Davis	Alcolu S C Box 86 R.1
769	19. Lucia Bracey	Pinewood S.C.
770	20. Mrs Meta Brunson	R. 2 Box 211-A Pinewood S.C.
771	21. Mr Silas walker Jr	R 1 Box 110 Galivants
772	22.	Jane Graham 202 Broad St.
773	24.	Margie La Mikel

Dated: October 4, 1966

I, Dorothy V. Sampson do certify That I personally saw each of the subscribers sign his or her name to this petition on the date above noted.

Dorothy V. Sampson
39 Hampton Street
Sumter, South Carolina.

[1968, March 5]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

IDELL D. KINGWOOD, et al., Plaintiffs, v. CAMPBELL SOUP COMPANY, INC., A New Jersey Corporation, et al., Defendants.	CIVIL ACTION NO. 67-167 REQUEST FOR ADMISSIONS

Campbell Soup Company (Sumter Plant) Inc., hereinafter called this Defendant, requests Annie Mae Goings, hereinafter called this Plaintiff, within 10 days after service of this request, to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

1. That each of the following documents, which are exhibited with this request and will again be produced for inspection upon reasonable request at the office of this Defendant's attorneys on any day within 10 days after the service of this request, is genuine:

a. Application for Employment dated March 1th and signed Annie Mae Goings, a copy of which is annexed hereto. This document is the application for employment filed by this Plaintiff with this Defendant on March 1, 1966.

b. Petition to Chairman, Equal Employment Opportunity Commission, dated October 4, 1966, signed by Annie Mae Goings, among others. This is a document which was signed by this Plaintiff, and other persons, during a meeting held in Sumter, South Carolina, on October 4, 1966.

2. That each of the following statements is true:

a. The said Application for Employment, exhibited with this request, was filed by this Plaintiff with this Defendant on March 1, 1966, and is the only written application for employment filed by this Plaintiff with either of the Defendants.

b. The said Petition, exhibited with this request, was filed by or on behalf of this Plaintiff with the Equal Employment Opportunity Commission in Washington, D. C., sometime in October, 1966.

c. The said Petition, exhibited with this request, was not sworn to by this Plaintiff.

d. With the exception of the said Petition, exhibited with this request, this Plaintiff has not filed any kind of unfair employment practice charge with the Equal Employment Opportunity Commission or any of its representatives against either of the Defendants at any time prior to the institution of this proceeding.

e. This Plaintiff has never been denied permission by either of the Defendants or any of their representatives to file an application for employment.

f. A manual dexterity test was administered to this Plaintiff by representatives of the South Carolina Employment Security Commission shortly before this Plaintiff filed the said Application for Employment with this Defendant, exhibited with this request, and she was advised by a representative of the said South Carolina Employment Security Commission that she had failed to pass the said test.

g. This Plaintiff has never received any introduction card to this Defendant from the South Carolina Employment Security Commission.

Robert T. Thompson

Homer L. Deakins, Jr.

Attorneys for Campbell Soup Company (Sumter Plant) Inc.

The Daniel Building
Greenville, S. C. 29602

Mgr. 4
Fair Jade MD

V2-38
Appl. card is for Roland
L Bare

APPLICATION FOR EMPLOYMENT

CAMPBELL SOUP COMPANY — (SUMTER PLANT) INC.

AN EQUAL OPPORTUNITY EMPLOYER

LIST NOTHING WHICH WOULD INDICATE NATIONAL ORIGIN, RACE, CREED OR COLOR

PERSONAL

Date March 4th Social Security Number 250-42-9400

Name Goings Annie Mae
(Please Print Name) (Last) (First) (Middle)

Address 139 MAXWELL St. Sumter. SC Telephone 775-2611
(Street & Number) (City) (Zone) State

Male ____ Female / Age 39 Date of Birth Aug 1 1923 Are you a Citizen? Yes / No ____
(Month, Day, Year)

Marital Status: Single ____ Divorced ____ Married / Widow(er) ____ No. of Children 3 (21-10)

Height 5 Ft 4 Weight 150 Is anyone dependent upon you for support? / Who? ____

What relatives do you have in our employ? No
(Name and Relationship)

Have you ever been employed by this Company? No If Yes, From ____ To ____
(Yes or No)

In case of emergency notify Shirnette Goings Address 139 Maxwell Telephone 775-2611

List any Physical Defects or Serious Illnesses None Worked Furniture Factory

Shift Preferred Evening (2nd Shift) Date Available Now

Position Desired Plant Pay Expected ____ How were you recommended to us?
Employment Office

PREVIOUS EMPLOYMENT

(List Most Recent Job First)

EXPERIENCE

COMPANY (Name) / (Address) / (City & State)	TYPE OF WORK PERFORMED	DATE EMPLOYED	REASON FOR LEAVING	SALARY
McDANIEL Dry / 410 PENN St / SUMTER S	CLERK	From 1960 To 1965	Laid off	$15 week
(Name) / (Address) / (City & State)		From ____ To ____		
(Name) / (Address) / (City & State)		From ____ To ____		

EDUCATION

EDUCATION	NAME OF SCHOOL AND LOCATION	DATES ATTENDED	GRADE AVERAGE	HIGHEST GRADE COMPLETED
Grade School	Manning	May 30, 1941		
High School	High		C	10th
College or University				
Correspondence or Other				

Have you ever been arrested? NO If yes, list dates and places: _____

Are you now or have you ever been a member of the Communist Party? No ✓ Yes _____

Are you now or have you ever been a member of any party or associated with any group which advocates the overthrow of the government of the United States? NO

Are you now or have you ever been a member of or associated with any organization which has been declared to be subversive by the Attorney General of the United States? Yes _____ No ✓.

If the answer to any of the above is Yes, please explain fully: None

Have you ever received Workmen's Compensation for any disability incurred in previous employment? NO

If yes, please explain: _____

Military Service: Branch _____ Date Inducted _____ Date of Discharge _____

Grade or Rank _____ Military Job _____ Type of Discharge _____

Give three character references. Do not include relatives and former employers.

Name Pearl McFadden Address 133 Maxwell Ave 52614

Name ~~Agnes Upton~~ Address 3-3137

Name Ruth Conyers Address 2-1411

I agree to submit a birth certificate or other evidence to substantiate my age. I have rechecked this application for errors and understand that the furnishing of misinformation or the withholding of information may subject me to immediate dismissal.

Witness _____ Signature Mary Annie Mae Boings

DO NOT WRITE BELOW THIS LINE

Medical Exam: Passed _____ Rejected _____ Restrictions: _____ Date _____ Dr's. Initials: _____

DATE	DEPARTMENT	POSITION	RATE	REMARKS

PETITION:

To: Chairman, Equal Employment Opportunity Commission

We, and each of us, the undersigned have found on many occasions that the SWANSON FROZEN FOOD DIVISION, of the CAmpbell Soup COMPANY Located at Sumter, South Carolina practices discrimination Toward Negroes and Toward me the undersigned in the screening and placement on JOBS NOW Available and WERE AVAILABLE SINCE the Company CAme To Sumter. Because this Company used and USES the South CAROLINA Employment SECURITY COMMISSION To receive our applications, we are Subjected To discrimination because that Commission has been found To act with discrimination towards Negroes - delayed referrals or no referals. We, and each of us, want this Company's DIVISION INVESTIGATED and some effort made To get us more of the Jobs there.

Dated: October 4, 1966.

Signed:

	NAME	Address:
AFC-10-747	1. Lillie Mae Pitts	413 Priemood Road
748	2. Alice Lee Frazier	44 S. St. Sumter
749	3. Annie Mae Scoings	15 Mitchell St
750	4. Mary Lee Lucas	R 11 Box 101 Alcolu, S.C.

Page one of three Pages

Page 2 of the Petition

		Name	Address:
AT 6-10-751	1.	Mrs Virginia Burgess	Rt 5, Box 338-B Sumter, S.C.
	752	2. Mrs Wilkes C Davis	526 So. Sumter St
	753	3. Mrs. Ruth D. Wright	19 Lincolnave
	754	4. Mrs Ola mae Jones	Rute 2 Box 51C
	755	5. Mrs Phoebe Davis	71 B 117 a Alcolu c
	756	6. Miss Gladys Romeo	P.O. Box 163 Pinewood, S.C
	757	7. Mrs. Delois Bailford	Box 7 Post Office Pinewood S.C.
	758	8. Mrs Cathrine Braxton	Rt 2 Box 181
	759	9. Mary Blanding	Routh 1 Box 924
	760	10. Mrs. Madgart Elizabeth Wright	Rt 5 Box 86-A Sumter,
	761	11. Miss Hattie mae McCoy	Rte 1 Box 238-A Sumter
	762	12. Miss Hattie L. Baxter	Rte 2 Box 181 Manning
	763	13. Mrs Mary E. Hicks	Rte 2 box 177 Manning S.C.
	764	14. Mrs Mary McCants	Rte 1 Box 90-B Alcolu S.C.
	765	15. Mrs Evelyn Dawsey	Alcolu SC Route 1 Box 96-
	766	16. Nora M. Perry	Pinewood S.C.,
	767	17. Ethel mae Burgess	RD. 1 Box 57 Alcolu SC
	768	18. Carrie mae Dawsey	Alcolu S C B. 86 B 1
	769	19. Lucie Bracey	Pinewood S.C.
	770	20. Mrs Metta Brunson	R. 2 Box 211-A Pinewood S.C.
	771	21. Mr Silas walker Jr	R 1 Box 110 Galivants
	772	22. Jennie Graham	202 Broad St.
	773	23. Lessie Lee Mickel	

Dated: October 4, 1966

I, Dorothy V. Sampson do certify That I personally saw each of the subscribers sign his or her name to this petition on the date above noted.

Dorothy V. Sampson
39 Washington Street
Sumter, South Carolina.

[1968, March 5]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

IDELL D. KINGWOOD, et al., Plaintiffs, v. CAMPBELL SOUP COMPANY, INC., A New Jersey Corporation, et al., Defendants.	CIVIL ACTION NO. 67-167 REQUEST FOR ADMISSIONS

Campbell Soup Company (Sumter Plant) Inc., hereinafter called this Defendant, requests Hattie Mae McCoy, hereinafter called this Plaintiff, within ten days after service of this request, to make the admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

1. That each of the following documents, which are exhibited with this request and will again be produced for inspection upon reasonable request at the office of this Defendant's attorneys on any day within ten days after the service of this request, is genuine:

a. Application for Employment dated 23 and signed Hattie Mae McCoy, a copy of which is annexed hereto. This document is the application for employment filed by this Plaintiff with this Defendant on May 23, 1966.

b. Petition to Chairman, Equal Employment Opportunity Commission, dated October 4, 1966, signed by Hattie Mae McCoy, among others. This is a document which was signed by this Plaintiff, and other persons, during a meeting held in Sumter, South Carolina, on October 4, 1966.

2. That each of the following statements is true:

a. The said Application for Employment, exhibited with this request, was filed by this Plaintiff with this Defendant on May 23, 1966, and is the only written application for employment filed by this Plaintiff with either of the Defendants.

b. The said Petition, exhibited with this request, was filed by or on behalf of this Plaintiff with the Equal Employment Opportunity Commission in Washington, D. C. sometime in October, 1966.

c. The said Petition, exhibited with this request, was not sworn to by this Plaintiff.

d. With the exception of the Petition, exhibited with this request, this Plaintiff did not file any type of unfair employment practice charge with the Equal Employment Opportunity Commission or any of its representatives against either of the Defendants at any time prior to the institution of this proceeding.

e. This Plaintiff has never been denied permission by either of the Defendants or any of their representatives to file an application for employment.

f. A manual dexterity test was administered to this Plaintiff by representatives of the South Carolina Security Commission sometime in August, 1966, and she was advised by a representative of this said South Carolina Employment Security Commission that she had failed to pass the said test.

g. This Plaintiff never received any introduction card to this Defendant from the South Carolina Employment Security Commission.

Robert T. Thompson

The Daniel Building
Greenville, S. C. 29602

Homer L. Deakins, Jr.

Attorneys for Campbell Soup Company
(Sumter Plant) Inc.

APPLICATION FOR EMPLOYMENT

Depts Eggs 24 for Client
LBell

CAMPBELL SOUP COMPANY — (SUMTER PLANT) INC.

AN EQUAL OPPORTUNITY EMPLOYER

LIST NOTHING WHICH WOULD INDICATE NATIONAL ORIGIN, RACE, CREED OR COLOR

PERSONAL

Date 9 2 Social Security Number 078-32-1533

Name McCoy Hattie Mae
(Please Print Name) (Last) (First) (Middle)

Address R 1 Box 238-P Sumter S.C. Telephone
(Street & Number) (City) (Zone) State

Male ____ Female V Age 21 Date of Birth Dec 7 1934 Are you a Citizen? Yes ____ No ____
(Month, Day, Year)

Marital Status; Single ____ Divorced ____ Married V Widow(er) ____ No. of Children 3 (13-1)

Height 5 6in Weight 122 Is anyone dependent upon you for support? H Who? 3 children + myself.

What relatives do you have in our employ? None
(Name and Relationship)

Have you ever been employed by this Company? N If Yes, From Quite a few months To
(Yes or No)

In case of emergency notify Oliver McCoy Jr Address R 1, Box 238-P Telephone

List any Physical Defects or Serious Illnesses

Shift Preferred First or Second Date Available Any Date available

Position Desired Pay Expected Minimum How were you recommended to us?

PREVIOUS EMPLOYMENT

(List Most Recent Job First)

EXPERIENCE

COMPANY	TYPE OF WORK PERFORMED	DATE EMPLOYED	REASON FOR LEAVING	SALARY
(Name)		From To		
(Address)				
(City & State)				
(Name)		From To		
(Address)				
(City & State)				
(Name)		From To		
(Address)				
(City & State)				

EDUCATION

EDUCATION	NAME OF SCHOOL AND LOCATION	DATES ATTENDED	GRADE AVERAGE	HIGHEST GRADE COMPLETED
Grade School	12	Every day	12	
High School	Morris College Sumter S.C.			
College or University				
Correspondence or Other				

Have you ever been arrested? No If yes, list dates and places: _____

Are you now or have you ever been a member of the Communist Party? No No Yes _____

Are you now or have you ever been a member of any party or associated with any group which advocates the overthrow of the government of the United States? No

Are you now or have you ever been a member of or associated with any organization which has been declared to be subversive by the Attorney General of the United States? Yes _____ No No.

If the answer to any of the above is Yes, please explain fully: _____

Have you ever received Workmen's Compensation for any disability incurred in previous employment? No

If yes, please explain: _____

Military Service: Branch _____ Date Inducted U Date of Discharge U

Grade or Rank _____ Military Job U Type of Discharge U

Give three character references. Do not include relatives and former employers.

Name X Margaret Wright Address Rt. 2 Box 535 N

Name X Lola Sharp Address Rt. 1 Box 239

Name X Mary Lou Collins Address Rt. 2 Box 210.

I agree to submit a birth certificate or other evidence to substantiate my age. I have rechecked this application for errors and understand that the furnishing of misinformation or the withholding of information may subject me to immediate dismissal.

Witness _____ Signature X Hattie M. McCoy

DO NOT WRITE BELOW THIS LINE

Medical Exam: Passed _____ Rejected _____ Restrictions: _____ Date _____ Dr's. Initials: _____

DATE	DEPARTMENT	POSITION	RATE	REMARKS

PETITION:

To: Chairman, Equal Employment Opportunity Commission

We, and each of us, the undersigned have found on many occasions that the SWANSON FROZEN FOOD DIVISION, of the CAmpbell SOUP COMPANY Located at Sumter, South Carolina practices discrimination Toward Negroes and Toward me the undersigned in the screening and placement on JOBS NOW Available and WERE AVAILABLE SINCE the Company CAme To Sumter. Because this Company used and USES the SOUTH CAROLINA Employment SECURITY COMMISSION To receive our applications, we are subjected to discrimination because that Commission has been found To act with discrimination towards Negroes - delayed referrals or no referrals. We, and each of us, want this Company's Division INvestigated and some effort made To get us more of the Jobs there.

Dated: October 4, 1966.

Signed:

		Address:
AFC-10-747	1. MAINE Lyllie Mae Pitts	413 Priend Road
748	2. Alice Jackson	44 & St. Simons
749	3. Annie Mae Goings	157 Mitchell St
750	4. Mary Lue Lucas	R11 Box 101 Alcolu, S.C.

AFC-10-747 thru 750
4 Pages

PAGE one of three PAGES

		Name	Address:
AT 6-10-751	1.	Mrs Virginia Burgess	R.F.D, Box 378-B Sumter, S.C.
752	2.	Mrs Wilkes C Ipers	526 Dr. Sumter S.C
753	3.	Mrs. Ruth D. Knight	1/2 Simkins ave
754	4.	Mrs Ola mae Jones	Rute 2 Box 51C
755	5.	Mrs Phoebe Davis	71 B 117a dalzelle
756	6.	Miss Gladys Romeo	P.O. Box 163 Pinewood, S.C
757	7.	Mrs. Delois Baisford	Post office Pinewood S.C.
758	8.	Mrs Cathrine Gaston	Rt 2 Box 181
759	9.	Mary Blondin	Routh 1 Box 94
760	10.	Mrs. Margaret Elizabeth Wright	Rt. 5 Box 86-A Sumter,
761	11.	Mrs Hattie mae McCoy	Rte 1, Box 238-A Sumter
762	12.	Miss Odette L. Gaston	Rte 2 Box 181 Manning
763	13.	Mrs Mary E. Hicks	Rte 2 box 177 Manning S.C.
764	14.	Mrs Mary McCants	Rte 1 Box 90-B Alcolu S.C
765	15.	Mrs Evelyn Danny	Alcolu SC Route 1 Box 96-
766	16.	Nora M. Perry	Pinewood S.C,
767	17.	Ethel mae Burgess	R.D. 1 Box 57 Alcolu SC
768	18.	Carrie Mae Danny	Alcolu S C Box 86 B1
769	19.	Annie Bracey	Pinewood S.C.
770	20.	Mrs Meta Brunson	R. 2 Box 211-A Pinewood S.C.
771	21.	Mr Silas walker jr	R 1 Box 110 Gable S.C
772	22.	Annie L Graham	202 Broad St.
773	23.	Minnie Lee Mickel	

Dated: October 4, 1966

I, Dorothy V. Sampson do certify that I personally saw each of the subscribers sign his or her name to this petition on the date above noted.

Dorothy V. Sampson
29 Washington Street
Sumter, South Carolina.

[1968, March 5]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

IDELL D. KINGWOOD, et al., Plaintiffs, v. CAMPBELL SOUP COMPANY, INC., A New Jersey Corporation, et al., Defendants.	CIVIL ACTION NO. 67-167 REQUEST FOR ADMISSIONS

Campbell Soup Company (Sumter Plant) Inc., hereinafter called this Defendant, requests Paralee McDowell, hereinafter called this Plaintiff, within 10 days after service of this request, to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

1. That the following document, which is exhibited with this request and will again be produced for inspection upon reasonable request at the office of this Defendant's attorneys on any day within 10 days after the service of this request, is genuine:

a. Application for Employment dated 4/15/66 and signed Paralee McDowell, a copy of which is annexed hereto. This document is the application filed by this Plaintiff with this Defendant on April 15, 1966.

2. That each of the following statements is true:

a. That the said Application for Employment, exhibited with this request, was filed by this Plaintiff with this Defendant on April 15, 1966, and is the only written application for employment filed by this Plaintiff with either of the Defendants.

b. The Wonderlic Personnel Test was administered to this Plaintiff by a representative of this Defendant sometime in October, 1966, and immediately thereafter this Plaintiff was advised by the said representative of this Defendant that she had failed to pass the said test.

c. This Plaintiff did not sign any petition addressed to the Chairman of the Equal Employment Opportunity Commission dated October 4, 1966.

d. Prior to the institution of this proceeding, this Plaintiff had not sworn to any written document addressed to the Equal Employment Opportunity Commission or any of its representatives alleging that either of the Defendants had discriminated in any manner against her or any other persons.

e. Prior to the institution of this proceeding, this Plaintiff had not served, or caused to be served, upon either of the Defendants any written document addressed to the Equal Employment Opportunity Commission or any of its representatives alleging that either of the Defendants had discriminated in any manner against her or any other person.

f. This Plaintiff has never been denied permission by either of the Defendants or any of their representatives to file an application for employment.

Robert T. Thompson

Homer L. Deakins, Jr.

The Daniel Building
Greenville, S. C. 29602

Attorneys for Campbell Soup Company
(Sumter Plant) Inc.

(Passed MD)

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L Bell

APPLICATION FOR EMPLOYMENT

CAMPBELL SOUP COMPANY — (SUMTER PLANT) INC.

AN EQUAL OPPORTUNITY EMPLOYER

LIST NOTHING WHICH WOULD INDICATE NATIONAL ORIGIN, RACE, CREED OR COLOR

PERSONAL

Date 4/15/66 Social Security Number 244-74-4227

Name (Please Print Name) McDowell (Last) Paralee (First) (Middle)

Address 220 Murphy (Street & Number) Sumter (City) (Zone) S. C. (State) Telephone 775-3775

Male ____ Female ✓ Age 22 Date of Birth Sept 29-44 (Month, Day, Year) Are you a Citizen? Yes ✓ No ____

Marital Status: Single ____ Divorced ____ Married ✓ Widow(er) ____ No. of Children 2 (3-2 mos)

Height 5'7 Weight 120 Is anyone dependent upon you for support? No Who? ____

What relatives do you have in our employ? None (Name and Relationship)

Have you ever been employed by this Company? ____ (Yes or No) If Yes, From ____ To ____

In case of emergency notify Lucy McDowell Sr. Address Henry P. Moses Co. Telephone ____

List any Physical Defects or Serious Illnesses None

Shift Preferred ~~Evening~~ Afternoon Date Available Any Time

Position Desired Clerk Pay Expected ____ How were you recommended to us?

PREVIOUS EMPLOYMENT

(List Most Recent Job First)

EXPERIENCE

COMPANY	TYPE OF WORK PERFORMED	DATE EMPLOYED	REASON FOR LEAVING	SALARY
Smith Canning Inc. (Name) Manning Rd. (Address) (City & State)		From 3 Mo To	Outside Employment	
(Name) (Address) (City & State)		From To		
(Name) (Address) (City & State)		From To		

EDUCATION

EDUCATION	NAME OF SCHOOL AND LOCATION	DATES ATTENDED	GRADE AVERAGE	HIGHEST GRADE COMPLETED
Grade School				
High School	Lincoln High	'61 '65	C	11 12
College or University				
Correspondence or Other				

Have you ever been arrested? No If yes, list dates and places: _____

Are you now or have you ever been a member of the Communist Party? No ✓ Yes _____

Are you now or have you ever been a member of any party or associated with any group which advocates the overthrow of the government of the United States? No

Are you now or have you ever been a member of or associated with any organization which has been declared to be subversive by the Attorney General of the United States? Yes _____ No ✓.

If the answer to any of the above is Yes, please explain fully: _____

Have you ever received Workmen's Compensation for any disability incurred in previous employment? _____

If yes, please explain: _____

Military Service: Branch _____ Date Inducted _____ Date of Discharge _____

Grade or Rank _____ Military Job _____ Type of Discharge _____

Give three character references. Do not include relatives and former employers.

Name Mrs Bessie Brown Address 1011 Belmont Dr.

Name Mrs Nettie Nelson Address 209 Grant Street

Name Mrs Jamie Park Address 220 Webb Avenue

I agree to submit a birth certificate or other evidence to substantiate my age. I have rechecked this application for errors and understand that the furnishing of misinformation or the withholding of information may subject me to immediate dismissal.

Witness _____ Signature X Pauline McDowell

DO NOT WRITE BELOW THIS LINE

Medical Exam: Passed _____ Rejected _____ Restrictions: _____ Date _____ Dr's. Initials: _____

DATE	DEPARTMENT	POSITION	RATE	REMARKS

[1968, March 5]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

IDELL D. KINGWOOD, et al., Plaintiffs, v. CAMPBELL SOUP COMPANY, INC., A New Jersey Corporation, et al., Defendants.	CIVIL ACTION NO. 67-167 REQUEST FOR ADMISSIONS

Campbell Soup Company (Sumter Plant) Inc., hereinafter called this Defendant, requests Ivey McDowell, Jr., hereinafter called this Plantiff, within 10 days after service of this request, to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

1. That the following document, which is exhibited with this request and will again be produced for inspection upon reasonable request at the office of this Defendant's attorneys on any day within 10 days after the service of this request, is genuine:

a. Application for Employment dated 4/25/66 and signed Ivey McDowell, Jr., a copy of which is annexed hereto. This document is the application for employment filed by this Plaintiff with this Defendant on April 25, 1966.

2. That each of the following statements is true:

a. The said Application for Employment, exhibited with this request, was filed by this Plaintiff with this Defendant on April 25, 1966.

b. Sometime in the latter part of November or the first part of December, 1966, this Plaintiff filed a second Application for Employment with this Defendant on the same type of application from.

c. At the time this Plaintiff filed the two applications for employment with this Defendant, he had not completed the eighth grade in any school.

d. A manual dexterity test has never been administered to this Plaintiff by either of the Defendants or any of their representatives, or by the South Carolina Employment Security Commission or any of its representatives.

e. This Plaintiff has never requested permission from either of the Defendants or their representatives, or from the South Carolina Employment Security Commission or its representatives, to take a manual dexterity test.

f. Prior to the institution of this proceeding, this Plaintiff had never filed any type of unfair employment practice charge with the Equal Employment Opportunity Commission or any of its representatives, alleging that either of the Defendants or their representatives had discriminated in any manner against him or any other persons.

g. This Plaintiff has never been denied permission by either of the Defendants or any of their representatives to file an application for employment.

Robert T. Thompson

Homer L. Deakins, Jr.

Attorneys for Campbell Soup Company (Sumter Plant) Inc.

The Daniel Building
Greenville, S. C. 29602

Defs Ey # 36 for Hand

APPLICATION FOR EMPLOYMENT

CAMPBELL SOUP COMPANY — (SUMTER PLANT) INC.

AN EQUAL OPPORTUNITY EMPLOYER

LIST NOTHING WHICH WOULD INDICATE NATIONAL ORIGIN, RACE, CREED OR COLOR

Date 9/25/66 Social Security Number 248-64-8963

PERSONAL

Name Dillie Powell Jr.
(Please Print Name) (Last) (First) (Middle)

Address Sumter (Street & Number) (City) S C (Zone) (State) Telephone 5-3775

Male ✓ Female ____ Age 25 Date of Birth 7-12-40 (Month, Day, Year) Are you a Citizen? Yes ____ No ____

Marital Status: Single ____ Divorced ____ Married ✓ Widow(er) ____ No. of Children 2

Height 5'11 Weight 178 Is anyone dependent upon you for support? yes Who? Family

What relatives do you have in our employ? None (Name and Relationship)

Have you ever been employed by this Company? No (Yes or No) If Yes, From ____ To ____

In case of emergency notify Pearlee M. Powell Address 220 Wayne St Telephone 5-3775

List any Physical Defects or Serious Illnesses None

Shift Preferred Any Date Available Now

Position Desired Any Pay Expected ____ How were you recommended to us?

By The new plant on Hwy 15 South of Sumter

PREVIOUS EMPLOYMENT

(List Most Recent Job First)

EXPERIENCE

COMPANY	TYPE OF WORK PERFORMED	DATE EMPLOYED	REASON FOR LEAVING	SALARY
(Name) Henry P Moses Co (Address) Sumter (City & State)	Carpter	From 1964 To 1966	No insurance Not Fair with pay	$1.30 per hour $62. per week
(Name) Frig. Inc (Address) New York 1250 Rockaway Ave (City & State)	Shiping Department	From 63 To 64	Lay off	$1.15 per hour $65 per weeks
(Name) Dellie Co (Address) New York (City & State)	Hardware	From Feb 1962-64 To April	Lay off	130 per hour $60 Per week

EDUCATION

EDUCATION	NAME OF SCHOOL AND LOCATION	DATES ATTENDED	GRADE AVERAGE	HIGHEST GRADE COMPLETED
Grade School	Stone Hill	1 — 6	B — B-X	
High School	Baltimore	6 — 8	C — B — B.X	8
College or University				
Correspondence or Other				

Have you ever been arrested? No If yes, list dates and places: _____

Are you now or have you ever been a member of the Communist Party? No_____ Yes_____

Are you now or have you ever been a member of any party or associated with any group which advocates the overthrow of the government of the United States?_____

Are you now or have you ever been a member of or associated with any organization which has been declared to be subversive by the Attorney General of the United States? Yes_____ No_____.

If the answer to any of the above is Yes, please explain fully: _____

Have you ever received Workmen's Compensation for any disability incurred in previous employment?_____

If yes, please explain:_____

Military Service: Branch _____ Date Inducted_____ Date of Discharge_____

Grade or Rank_____ Military Job_____ Type of Discharge _____

Give three character references. Do not include relatives and former employers.

Name Lincoln Brock Address 210 Newman

Name Pauline Brock Address 210 Newman

Name Fanny Peck Address Webb St

I agree to submit a birth certificate or other evidence to substantiate my age. I have rechecked this application for errors and understand that the furnishing of misinformation or the withholding of information may subject me to immediate dismissal.

Witness_____ Signature Davey McDowell Jr

DO NOT WRITE BELOW THIS LINE

Medical Exam: Passed_____ Rejected_____ Restrictions:_____ Date_____ Dr's. Initials:_____

DATE	DEPARTMENT	POSITION	RATE	REMARKS

[1968, March 5]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

IDELL D. KINGWOOD, et al., Plaintiff, v. CAMPBELL SOUP COMPANY, INC. A New Jersey Corporation, et al., Defendants.	CIVIL ACTION NO. 67-167 REQUEST FOR ADMISSIONS

Campbell Soup Company (Sumter Plant) Inc., hereinafter called this Defendant, requests Gussi Lee Mickel, hereinafter called this Plaintiff, within 10 days after service of this request, to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

1. That each of the following documents, which are exhibited with this request and will again be produced for inspection upon reasonable request at the office of this Defendant's attorneys on any day within 10 days after the service of this request, is genuine:

a. Application for Employment dated March 31, 1966 and signed Gussi Lee Mickel, a copy of which is annexed hereto. This document is the application for employment filed by this Plaintiff with this Defendant on March 31, 1966.

b. Wonderlic Personnel Test, Form I, dated July 12, 1966, and signed Gussi Lee Mickel, a copy of which is annexed hereto. This document is the Wonderlic Personnel Test which was administered to this Plaintiff by a representative of this Defendant on July 12, 1966.

c. Wonderlic Personnel Test, Form I, dated August 2, 1966, and signed Gussie Lee Mickel, a copy of which is annexed hereto. This document is the Wonderlic Personnel Test which was administered to this Plaintiff by a representative of this Defendant on August 2, 1966.

d. Personal Health History Record, dated 8-2-66 and signed Gussi Lee Mickel, a copy of which is annexed hereto. This document was filled out by this Plaintiff at this Defendant's plant in Sumter, South Carolina, on August 2, 1966, prior to the time she was given a physical examination.

e. Pre-Placement Physical Examination Record, dated 8/2/66 and signed by Gussi Lee Mickel and Dr. A. P. Bruner, respectively, a copy of which is annexed hereto. This is a document which was filled out by the said Dr. Bruner at this Defendant's plant in Sumter, South Carolina, on August 2, 1966, after this Plaintiff had been given a physical examination by him.

f. Petition to Chairman, Equal Employment Opportunity Commission, dated October 4, 1966, signed by Gussi Lee Mickel, among others. This is a document which was signed by this Plaintiff, and other persons, during a meeting held in Sumter, South Carolina, on October 4, 1966.

g. Charge of Discrimination dated 10/31/66, and signed by Gussi Lee Mickel, a copy of which is annexed hereto. This document is the Charge of Discrimination filed by this Plaintiff against this Defendant with the Equal Employment Opportunity Commission on or about November 2, 1966.

2. That each of the following statements is true:

a. That the said Application for Employment, exhibited with this request, was filed by this Plaintiff with this Defendant on March 31, 1966, and is the only written application for employment filed by this Plaintiff with either of the Defendants.

b. The said Wonderlic Personnel Test dated July 12, 1966, exhibited with this request, was administered to this Plaintiff by a representative of this Defendant on July 12, 1966.

c. The said Wonderlic Personnel Test dated August 2, 1966, exhibited with this request, was administered to this Plaintiff by a representative of this Defendant on August 2, 1966.

d. This Plaintiff was given a physical examination at this Defendant's plant in Sumter, South Carolina, by Dr. A. P. Bruner on August 2, 1966, and immediately thereafter she was advised by the said Dr. Bruner that she had failed to pass the said test.

e. The said Personal Health History Record, exhibited with this request, was filled out and signed by this Plaintiff at this Defendant's plant in Sumter, South Carolina on December 5, 1966, prior to the time she was given a physical examination by Dr. A. P. Bruner.

f. The said Pre-Placement Physical Examination Record, exhibited with this request, was filled out by Dr. A. P. Bruner and signed by both him and this Plaintiff at this Defendant's plant in Sumter, South Carolina, on August 2, 1966, after this Plaintiff had been given a physical examination by the said Dr. Bruner.

g. The said Pre-Placement Physical Examination Record, exhibited with this request, specifies the reasons given by Dr. A. P. Bruner for recommending that this Plaintiff was not physically qualified to work at this Defendant's plant in Sumter, South Carolina, and such reasons were based upon his examination of this Plaintiff.

h. This Plaintiff did not furnish to either of the Defendants or any of their representatives any information concerning her physical condition which was contradictory to the statements contained in the said Pre-Placement Physical Examination Record, exhibited with this request, at any time prior to the institution of this proceeding.

i. The said Petition, exhibited with this request, was filed by and on behalf of this Plaintiff with the Equal Employment Opportunity Commission in Washington, D. C., sometime in October, 1966.

j. The said Petition, exhibited with this request, was not sworn to by this Plaintiff.

k. The said Charge of Discrimination, exhibited with this request, is not one of the unfair employment practice charges involved in the Decision by the Equal Employment Opportunity Commission against these Defendants, dated December 5, 1966, a copy of which Decision is annexed to the Plaintiffs' Complaint in this proceeding.

l. No Decision has ever been issued by the Equal Employment Opportunity Commission concerning the said Charge of Discrimination, exhibited with this request.

m. The said Charge of Discrimination, exhibited with this request, is not one of the unfair employment practice

charges concerning which counsel was advised by letter from the Equal Employment Opportunity Commission dated February 13, 1967, that the said Commission had not achieved voluntary compliance by the Defendants through conciliation.

n. With the exception of the two documents mentioned in paragraphs 1 f and 1 g above, this Plaintiff did not at any time prior to the institution of this proceeding file any other written document with the Equal Employment Opportunity Commission or any of its representatives alleging that either of the Defendants had discriminated in any manner against her or any other persons.

o. This Plaintiff has never been denied permission by either of the Defendants or any of their representatives to file an application for employment.

Robert T. Thompson

The Daniel Building
Greenville, S. C. 29602

Homer L. Deakins, Jr.

Attorneys for Campbell Soup Comapny
(Sumter Plant) Inc.

Dept # 29 for Night Shift

APPLICATION FOR EMPLOYMENT

CAMPBELL SOUP COMPANY — (SUMTER PLANT) INC.

AN EQUAL OPPORTUNITY EMPLOYER

LIST NOTHING WHICH WOULD INDICATE NATIONAL ORIGIN, RACE, CREED OR COLOR

PERSONAL

Date March 31 1966 Social Security Number 250-52-6533

Name Mrs. (Please Print Name) Mickel (Last) Cussie (First) Lee (Middle)

Address 854 So. Harvin (Street & Number) Sumter (City) (Zone) S.C. State Telephone

Male ____ Female ✓ Age 37 Date of Birth 8-21-28 (Month, Day, Year) Are you a Citizen? Yes ✓ No ____

Marital Status: Single ____ Divorced ____ Married ✓ Widow(er) ____ No. of Children 6/8 — 7

Height 5 ft Weight 170 Is anyone dependent upon you for support? yes Who? Children

What relatives do you have in our emp[loy] (Name & Relationship)

Have you ever been employed by [C]ompany? no (Yes or No) If Yes, From ____ To ____

In case of emergency notify Mrs. Christine Davis Address 854 So. Harvin Telephone ____

List any Physical Defects or Serious Illnesses None

Shift Preferred Night Shift (2nd) Date Available ____

Position Desired Boning Pay Expected $55.00 How were you recommended to us?

By the Employment office

PREVIOUS EMPLOYMENT

(List Most Recent Job First)

EXPERIENCE

COMPANY	TYPE OF WORK PERFORMED	DATE EMPLOYED	REASON FOR LEAVING	SALARY
Atlantic Laundry (Name)	pressing	From 52 To 62	ill	$12.00-$20.00
209 N. Harvin (Address)	Shirts			
Sumter, S.C. (City & State)				
Ellis Howard (Mr. (Name)	House	From Oct. To Feb.	Sickness	$15.00 $18.00
703B Miller Rd. (Address)	work		in Family	
Sumter, S.C. (City & State)				
(Name)		From ____ To ____		
(Address)				
(City & State)				

EDUCATION

EDUCATION	NAME OF SCHOOL AND LOCATION	DATES ATTENDED	GRADE AVERAGE	HIGHEST GRADE COMPLETED
Grade School	St. George, Reidville S.C.	7th		8th Gr.
High School	St. George, "	1944		12th
College or University				
Correspondence or Other				

Have you ever been arrested? No If yes, list dates and places: _____

Are you now or have you ever been a member of the Communist Party? No ✓ Yes _____

Are you now or have you ever been a member of any party or associated with any group which advocates the overthrow of the government of the United States? No

Are you now or have you ever been a member of or associated with any organization which has been declared to be subversive by the Attorney General of the United States? Yes _____ No ✓.

If the answer to any of the above is Yes, please explain fully: _____

Have you ever received Workmen's Compensation for any disability incurred in previous employment? No

If yes, please explain: _____

Military Service: Branch _____ Date Inducted _____ Date of Discharge _____

Grade or Rank _____ Military Job _____ Type of Discharge _____

Give three character references. Do not include relatives and former employers.

Name Lillie Postell Address 856 South Hermon St

Name Mrs. J. Jackson Address 292 Brent Circle

Name Dorcas Boone Address 952 South Hermon St

I agree to submit a birth certificate or other evidence to substantiate my age. I have rechecked this application for errors and understand that the furnishing of misinformation or the withholding of information may subject me to immediate dismissal.

Witness _____ Signature X Susie Jones

DO NOT WRITE BELOW THIS LINE

Medical Exam: Passed _____ Rejected _____ Restrictions: _____ Date _____ Dr's. Initials: _____

DATE	DEPARTMENT	POSITION	RATE	REMARKS

Copies Ex # 31 for Identif
L P Sm

WONDERLIC

PERSONNEL TEST

FORM I

NAME Neal Patrick Smith Date July 12 1960
(Please Print)

READ THIS PAGE CAREFULLY. DO EXACTLY AS YOU ARE TOLD.
DO NOT TURN OVER THIS PAGE UNTIL YOU ARE
INSTRUCTED TO DO SO.

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REAP is the opposite of

1 obtain, 2 cheer, 3 continue, 4 exist, 5 sow ..... [5]

The correct answer is "sow." (It is helpful to underline the correct word.) The correct word is numbered 5. Then write the figure 5 in the brackets at the end of the line.

Answer the next sample question yourself.

Gasoline sells for 23 cents per gallon. What will 4 gallons cost? ..... [___]

The correct answer is 92¢. There is nothing to underline so just place "92¢" in the brackets.

Here is another example:

MINER MINOR — Do these words have

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The correct answer is "mean neither same nor opposite" which is number 3 so all you have to do is place a figure "3" in the brackets at the end of the line.

When the answer to a question is a letter or a number, put the letter or number in the brackets.
All letters should be printed.

This test contains 50 questions. It is unlikely that you will finish all of them, but do your best. After the examiner tells you to begin, you will be given exactly 12 minutes to work as many as you can. Do not go so fast that you make mistakes since you must try to get as many right as possible. The questions become increasingly difficult, so do not skip about. Do not spend too much time on any one problem. The examiner will not answer any questions after the test begins.

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PRINTED IN U.S.A.

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   1 October, 2 May, 3 November, 4 February ..... [4]
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   1 harsh, 2 stern, 3 tender, 4 rigid, 5 unyielding ..... [3]
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   1 certainty, 2 dubiousness, 3 assuredness, 4 confidence, 5 sureness ..... [2]
4. Answer by printing YES or NO. Does B.C. mean "before Christ"? ..... [YES]
5. In the following set of words, which word is different from the others?
   1 sing, 2 call, 3 chatter, 4 hear, 5 speak ..... [4]
6. PURE is the opposite of
   1 immaculate, 2 indecent, 3 incorrupt, 4 innocent, 5 classical ..... [2]
7. Which word below is related to chew as smell is to nose?
   1 sweet, 2 stink, 3 odor, 4 teeth, 5 clean ..... [4]
8. How many of the five pairs of items listed below are exact duplicates? ..... [1]

Sharp, M. G.	Sharpe, M. G.
Fiedler, E. H.	Fiedler, E. H.
Connor, M. J.	Conner, M. J.
Woesner, O. W.	Woerner, O. W.
Soderquist, P. E.	Soderquist, B. E.

9. CLEAR is the opposite of
   1 plain, 2 obvious, 3 explicit, 4 distinct, 5 dim ..... [5]
10. A dealer bought some cars for $3500. He sold them for $5500, making $50 on each car. How many cars were involved? ..... [100]
11. ADOPT ADEPT — Do these words have
    1 similar meanings, 2 contradictory, 3 mean neither same nor opposite? ..... [3]
12. Lemons sell at 3 for 15 cents. How much will 1½ dozens cost? ..... [$1.50]
13. How many of the six pairs of items listed below are exact duplicates? ..... [5]

5296	5296
66986	69686
834426	834426
7354256	7354256
61197172	61197172
83238324	83238234

14. FAMILIAR is the opposite of
    1 friendly, 2 old, 3 strange, 4 aloof, 5 different ..... [5]
15. Which number in the following group of numbers represents the smallest amount?
    6 .7 9 36 .31 5 ..... [.7]
16. Suppose you arranged the following words so that they made a true statement. Then print the last letter of the last word as the answer to this problem.
    of salt the life Love is ..... [E]
17. One of the numbered figures in the following drawings is most different from the others. What is the number in that drawing? ..... [5]

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19. REFLECT REFLEX — Do these words have
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20. Suppose you arrange the following words so that they make a complete sentence. If it is a true statement, mark (T) in the brackets, if false, put an (F) in the brackets.
    moss A stone gathers rolling ..... [F]
21. Assume the first 2 statements are true. Is the final one: (1)true, (2)false, (3)not certain?
    Most progressives are business men. Most progressives are Republicans. Some business men are Republicans. ..... [3]
22. Two of the following proverbs have similar meanings. Which ones are they? ..... [3 5]
    1. Straws show which way the wind blows.
    2. An empty sack can't stand straight.
    3. No doctor at all is better than three.
    4. All is not gold that glitters.
    5. Too many cooks spoil the broth.
23. Look at the row of numbers below. What number should come next?
    73 66 59 52 45 38 ? ..... [31]
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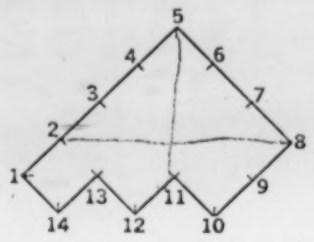
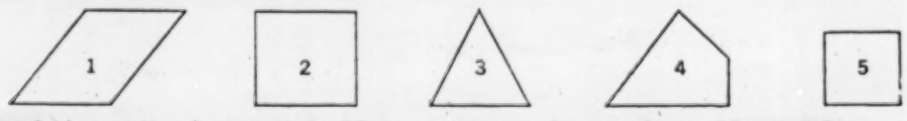
    Bill is the same age as Mary. Mary is younger than John. Bill is younger than John [2]
26. A train travels 75 feet in ¼ second. At this same speed, how many feet will it travel in 5 seconds? ..... [300]
27. Five pounds of meat sells for $2.00; how many pounds can you buy for 80 cents? ..... [2]
28. STRETCH SPREAD — Do these words have
    1 similar meanings, 2 contradictory, 3 mean neither same nor opposite? ..... [3]

29. This geometric figure can be divided by a straight line into two parts which will fit together in a certain way to make a perfect square. Draw such a line by joining two of the numbers. Then write the numbers as the answer. ..... [2-8]



30. Assume the first 2 statements are true. Is the final one: (1)true, (2)false, (3)not certain?
Fred greeted Mary. Mary greeted Ned. Fred did not greet Ned. ..... [3]
31. An automobile that costs $2490 has decreased 33⅓% in value by the end of the season. What was its value at that time? ..... [___]
32. One of the numbered figures in the following drawings is most different from the others. What is the number in that drawing? ..... [1]



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35. ENLARGE AGGRANDIZE — Do these words have 1 similar meanings, 2 contradictory, 3 mean neither same nor opposite? ..... [___]
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41. IMAGE IMAGINARY — Do these words have 1 similar meanings, 2 contradictory, 3 mean neither same nor opposite? ..... [___]
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Dept Eff 32 for Stewart
L Bu

WONDERLIC

PERSONNEL TEST

FORM I

folded

NAME Jason Lee Miller (Please Print) Date Aug 9, 1966

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4. Answer by printing YES or NO. Does B.C. mean "before Christ"? ..... [C]
5. In the following set of words, which word is different from the others?
   1 sing, 2 call, 3 chatter, 4 hear, 5 speak ..... [Speak]
6. PURE is the opposite of
   1 immaculate, 2 indecent, 3 incorrupt, 4 innocent, 5 classical ..... [5]
7. Which word below is related to chew as smell is to nose?
   1 sweet, 2 stink, 3 odor, 4 teeth, 5 clean ..... [Sweet]
8. How many of the five pairs of items listed below are exact duplicates? ..... [3]

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16. Suppose you arranged the following words so that they made a true statement. Then print the last letter of the last word as the answer to this problem.
    of salt the life Love is ..... [dirt]
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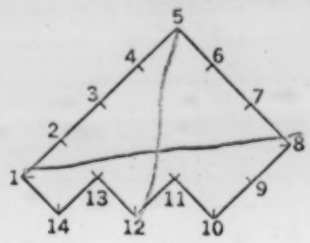

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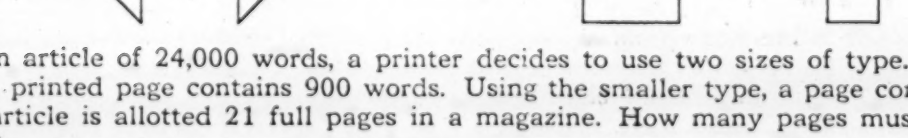

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PERSONAL HEALTH HISTORY RECORD

...ent or misleading ...ct is grounds for dismissal

Campbell SOUP Company

Date of Examination 8-2-66

Date of Hire

(Last) Pugh (First) Lucas Jr. (Middle) (Mrs.)

Address [illegible] Phone:

PERSONAL DATA: Sex F Age 3 Date of Birth 6-26-1926 Place of Birth Dorchester County, S.C.

Single ☐ Widower ☐ Own Home ☐ Live with Husband or Wife ☒ No. of Dependent Relatives 5 Service in the Armed Forces ☐ Yes ☒ No

Married ☒ Separated ☐ Rent Home ☒ Live with Parents ☐ No. of Persons in Household 7 In Which Branch?

Widow ☐ Divorced ☐ Board ☐ Live with Relatives ☐ Date of Marriage 8-20-1944 Date Entered Date Discharged

PERSONAL PHYSICIAN Name Dr. [illegible] Address [illegible] Phone

FAMILY HISTORY	Ages	State of Health	If Dead – Give Cause	Age at Death
Wife, Husband	43	Poor		
Father				
Mother				
Brothers				
Sisters				
Children	14, 12, 10, 7			

Has your Blood Relative ever had?	Yes	No	Which Relative?
Arthritis or Rheumatism			
Hay Fever, Asthma or Hives			
Ulcer of Stomach or Duodenum			
Heart Trouble			
Nerve Disorder			
High Blood Pressure			
Kidney Trouble			
Mental Illness			
Tuberculosis			
Diabetes			

HAVE YOU EVER HAD, OR HAVE YOU NOW (Check either Yes or No after each item, Put a Question mark (?) if you don't know.)

Check Each Item	Yes	No	Check Each Item	Yes	No	Check Each Item	Yes	No	Check Each Item	Yes	No
Alcoholism?		X	Cyst, Growth or Tumor		X	Indigestion, Frequent or Severe		X	Shortness of Breath		X
Allergy? Hives?		X	Deformity? Amputation?		X	Injury, Serious?		X	Shoulder Pain? Arm or Hand Pain?		X
Anemia? Other Blood Condition?		X	Depression? Excessive Worry?		X	Joints: Painful? Swollen?		X	Sinus Trouble? Sinus Operation?		X
Anxiety? Nervousness?		X	Diabetes		X	Kidney or bladder Trouble		X	Skin Trouble? Rash? Eczema?		X
Appetite, Loss of		X	Ear Trouble? Ear Discharges?		X	Knee: Pain? Trick, Locked Knee?		X	Sleeping Trouble		X
Arthritis? Rheumatism?		X	Emotional disturbances		X	Liver Disease? Jaundice?		X	Sores, Chronic		X
Asthma? Hay Fever?		X	Epilepsy		X	Lung Trouble, Injury, Disease?		X	Spine Disease		X
Backache? Back Injury?		X	Eye Trouble other than Glasses		X	Malaria		X	Stomach Trouble: Ulcer:		X
Blackouts? Dizzy Spells?		X	Fainting or Dizziness		X	Medicine or Serums: Ill Effects?		X	Swelling: Ankle, Feet or Legs?		X
Blindness? Double Vision?		X	Fatigued Easily		X	Meningitis		X	Teeth Trouble		X
Blood Disease		X	Foot Trouble or Painful Feet		X	Mental Illness		X	Testicle Trouble		X
Bone Disease? Joint Disease?		X	Fractured Bone or Dislocation		X	Migraine Headaches		X	Throat Trouble, Severe		X
Bowel Trouble		X	Gall Stones		X	Nausea or Vomiting, Severe, Chronic		X	Thyroid Trouble? Goiter?		X
Brace or Cast for Back		X	Gall Bladder Trouble		X	Nervous Breakdown		X	Tuberculosis		X
Brain Disease		X	Gout		X	Neuritis? Nerve Disorder?		X	Ulcers? Digestive Trouble?		X
Breast Trouble		X	Head Injury? Brain Concussion?		X	Nose Trouble, Severe		X	Urination Difficulty		X
Bronchitis, Chronic		X	Headaches, Frequent or Severe		X	Palpitation or Pounding Heart		X	Urine: Sugar? Albumin? Blood?		X
Cancer? Tumor?		X	Hearing Difficulty? Use an Aid?		X	Paralysis		X	Varicose Veins, Phlebitis?		X
Chest Pain or Pressure		X	Heart Trouble		X	Piles? Rectal Disease?		X	Venereal Disease		X
Chills, Fever, or Night Sweats		X	Heat–Stroke? Sun–Stroke?		X	Pilonidal Infection		X	Vision Difficulty		X
Circulation Disturbances		X	Hernia or Rupture? Wear a Truss?		X	Prostate Trouble		X	Weakness? Fatigue, Severe?		X
Colitis		X	High Blood Pressure		X	Rheumatic Fever		X	Weight: Recent Gain or Loss		X
Cough, Chronic		X	Hoarseness, Severe		X	Shock		X			
THIS SECTION FOR WOMEN ONLY.			Treated for Female Disorder		X	Number of Pregnancies	6		Duration of Period	4	00
Had Female Operation		X	Had Painful Menstruation		X	Interval Between Periods			Date of Last Period	7-6	66

INFECTIOUS ILLNESSES (Check those you have had)

Abscess, Boil ☒	Dengue ☐	Influenza ☐	Parasites ☐	Small Pox ☐	
Athletes Foot ☐	Diphtheria ☐	Mastitis ☐	Pleurisy ☐	Strep Throat ☐	
Chicken Pox ☐	Dysentery ☐	Measles ☒	Pneumonia ☐	Typhoid ☐	
Cystitis ☐	Fungus Infection ☐	Mumps ☒	Polio ☐	Undulant Fever ☐	
Carbuncle ☐	Infectious Mononucleosis ☐	Nephritis ☐	Scarlet Fever ☐	Valley Fever ☐	
				Worms ☐	

INOCULATIONS (Check by giving dates:) Small Pox: Yes Tetanus: Polio: 1963 Influenza: Others:

PLEASE CONTINUE	Yes	No	PLEASE CONTINUE	Yes	No
Have you ever had an operation; or have you ever been advised to have an operation? C.A.		No	Have you any physical complaint, impairment or disability at present?		No
Have you ever been a patient in any kind of a hospital or institution?		No	Have you any condition requiring a special work assignment if you are hired?		No
Have you ever had illnesses or injuries requiring Doctors' care, other than those listed above?		No	Have you ever been forced to give up a job because of health reasons?		No
Have you ever been disqualified for full duty in, or discharged from the armed forces, for medical reasons?		No	Have you ever been rejected because of medical reasons for life insurance? For employment?		No
Have you lost time from work due to illness or injury during the last two years?		No	Have you ever been refused a drivers' license?		No
Have you ever worked in an industry using radioactive materials?		No	Have you ever been treated by X-Rays? Have you ever been treated with radio-active material?		No
Have you ever worked in mining, foundry, sand blasting, steel, or a chemical industry? Have you ever worked on a dusty job?		No	Have you consulted or been treated by clinics, physicians, healers, or other practitioners within the past five years?		No
Have you ever filed a compensation claim, or received workmens' compensation benefits as a result of industrial injury or disease?		No	Are you taking any medicine, or drug or any other treatment now?		No
Has your work ever been limited or restricted because of your health or a disability?		No	Have you any other health problems you would like to discuss with the doctor?		No
Have you ever received a pension or award for disability or for military service?		No	Would you say the state of your health is – – ☒ Excellent ☐ Good ☐ Fair ☐ Poor ☐ ?		

I certify that the above information supplied by me is true, and complete to the best of my knowledge. I hereby authorize any doctor, clinic, or hospital, who has treated me, to supply complete transcript of my medical records to the medical department of Campbell Soup Company.

Applicant's Signature [illegible]

(OVER) Print your age and name at top of other side

PRE-PLACEMENT PHYSICAL EXAMINATION RECORD

Campbell SOUP Company

Age 37 NAME: Mickel (Last) (First) (Middle)

Plant or Division: Sales

Pre-Employment / Pre-Placement / Re-Entrance / Present Examination

Occupational / Periodic / Other-specify

Occupation – Type of Work

Build: Slender / Medium / Obese

Frame: Small / Medium / Large

Temperature 99.4

Height: 5 Feet 7 Inches

Weight 141 Lbs.

Pulse – A-Before Exercise 80
B-2 Minutes After Exercise

Hearing – R –
L –

Blood Pressure 138/80

	Acuity	Uncorrected			Corrected		
Peripheral Vision	Far	Right Eye 20	Left Eye 20	Both Eyes 20	Right Eye 20	Left Eye 20/	Both Eyes 20/
Intraocular Tension	Near	Right Eye 20	Left Eye 20	Both Eyes 20	Right Eye 20	Left Eye 20/	Both Eyes 20/

Color Vision —

Depth Perception —

CLINICAL EVALUATION: (Use Code) "0" – Within Normal Limits "1" – Significantly Abnormal "X" – Not Examined

	Code		Code		Code		Code
Deformities		26 Mouth		51 Groin		76 Joints – Hips	
Posture		27 Teeth		52 Hernia		77 Knees	
Skin		28 Gums		53 Truss		78 Ankles	
		29 Tongue		54 Glands		79 Toes	
Rash		30 Throat		55 Genitalia		80	
		31 Tonsils		56 Scars, Sores, Discharges		81 Spine – Curvature	
		32 Oral Hygiene		57 Varicocele		82 Mobility	
Musculature		33 Neck		58 Hydrocele		83 Deformity	
Atrophies		34 Thyroid		59 Testicles		84 Tenderness	
0 Scalp		35 Glands		60 Legs		85	
1 Eyes		36 Thorax		61 Varicosities		86 Gait	
2 Conjunctiva		37 Expansion (inches)		62 Pigmentation		87	
3 Cornea		38 Breasts		63 Edema		88 Reflexes	
4 Pupils "L" & "R"		39 Ribs		64		89 Romberg	
5 Opthalmoscopic		40 Lungs		65		90 Knee	
6 Eye Glasses		41 Heart		66 Rectum		91 Achilles	
17		42		67		92 Babinski	
18 Nose		43		68 Pilonidal		93 Superficial	
19 Ears		44		69 Joints – Neck		94 Sensory Tests	
20 External		45 Abdomen		70 Shoulders		95	
21 Otoscopic		46 Size (inches)		71 Elbows		96 Lymphatics	
22 Hearing Aid		47 Tenderness		72 Wrists		97	
23 Hearing		48 Tumors, Masses		73 Fingers		98 Mental	
24		49 Umbilicus		74		99 Emotional	
25		50		75			

	Yes	No
Does the Examinee have physical, nervous or emotional disability which warrants special work restrictions?		
Does he have a condition for which Remediable Therapy is indicated?		
Did you refer him to a Doctor or rehabilitation agency?		

hypertrophic tonsils

URINALYSIS: Reaction Specific Gravity Albumin Sugar Microscopic

C.B.C.	HGB.	Serology:
Chest X-Ray:	Back X-Ray	E.K.G.:

Physical Rating A,B,C,D

A – Qualified for any work

B – Qualified for any work suitable for individuals of small stature (including women)

C – Qualified for restricted work (indicate restrictions 1 to 6)

D – Not qualified for any available work _____

(If "C", Circle No. 1,2,3,4,5 or 6)

1 – Minimal Lifting
2 – Minimal Bending
3 – No Climbing
4 – No long periods of standing
5 – No Exposure to _____
6 – Special restrictions _____

EXAMINING PHYSICIAN: Please add your summary and diagnoses below. Explain any abnormal history; make notes of the dates, and the presence or absence of sequelae. You should comment on each item checked "YES" on the other side of this sheet. Include your recommendations to the examinee. Please use a blank sheet if you need more space.

hypertrophic tonsils & pilonidal sinus
Referred to Surg
Obesity
Visual Defect.

Physical Profile Serial	D	Re-examine in ___ months	Physician's Signature and Date	[illegible] 11/8/66

I have been informed regarding the Medical Examination findings herein. Applicant's Signature and Date Thomas Lee Mickel

5.

PETITION:
To: Chairman, Equal Employment Opportunity Commission

We, and each of us, the undersigned have found on many occasions that the SWANSON FROZEN FOOD DIVISION, of the Campbell Soup Company Located at Sumter, South Carolina practices discrimination Toward Negroes and Toward me the undersigned in the screening and placement on JOBS Now Available and WERE AVAILABLE SINCE the Company Came To Sumter. Because this Company used and USES the South CAROLINA Employment SECURITY COMMISSION to receive our applications, we are subjected to discrimination because that Commission has been found To act with discrimination towards Negroes - delayed referrals or no referrals. We, and each of us, want this Company's Division INvestigated and some effort made To get us more of the Jobs there.
Dated: October 4, 1966.
Signed:

			Address:
		MAINE	
AFC-10-747	1.	Lydia Mae Pitts	413 Pinewood Road
748	2.	Alice Dacfron	44 & St. Sumter
749	3.	Annie Mae Goings	15 Mitchell St
750	4.	Mary Lee Lican	R 1 Box 101 Alcolu S.C.

Page one of three Pages

		Name	Address:
AT 6-10-751	1.	Mrs Virginia Burgess	Rt 5, Box 338-B Sumter, S.C.
752	2.	Mrs Wilkes C Davis	526 Dr. Sumter St
753	3.	Mrs. Ruth D. Knight	410 Jackson ave
754	4.	Mrs Ida mae Jones	Rute 2 Box 51C
755	5.	Mrs Phoebe Davis	711 B 117 a Alcolu S C
756	6.	Miss Gladys Romeo	P.O. Box 163 Pinewood, S.C
757	7.	Mrs. Delois Guilford	Box 44 Post Office Pinewood S.C.
758	8.	Mrs Cathrine Braxton	Rt 2 Box 181
759	9.	Mary Blondin	Route 1 Box 94
760	10.	Mrs. Margaret Elizabeth Knight	Rt. 5 Box 86-A Sumter,
761	11.	Mrs. Hattie mae McCoy	Rte 1, Box 233-A Sumter
762	12.	Miss Hattie L. Davis	Rte 2 Box 181 Manning
763	13.	Mrs Mary E. Hicks	Rte 2 box 177 Manning S.C.
764	14.	Mrs Mary McCants	Rte 1 Box 90-B Alcolu S.C.
765	15.	Mrs Evelyn Davis	Alcolu SC Route 1 Box 96-
766	16.	Nora M. Perry	Pinewood S.C.
767	17.	Ethel mae Burgess	RD 1 Box 57 Alcolu SC
768	18.	Carrie Mae Davis	Alcolu S C Box 86 B-1
769	19.	Lucie Bracey	Pinewood S.C.
770	20.	Mrs Meta Brunson	R. 2 Box 211-A Pinewood S.C.
771	21.	Mr Silas walker Jr	R 1 Box 110 Galivants
772	22.	Jannie Graham	202 Braid St.
773	24	Maggie Lee Mikell	

Dated: October 4, 1966

I, Dorothy V. Sampson do certify that I personally saw each of the subscribers sign his or her name to this petition on the date above noted.

Dorothy V. Sampson
39 Harvin Town Street
Sumter, S. Carolina.

CHARGE OF DISCRIMINATION
(Under Title VII of the Civil Rights Act of 1964)

This form is to be used only to file a charge of discrimination based on RACE, COLOR, RELIGION, SEX, or NATIONAL ORIGIN.

AT7-1-42

MAIL TO: Equal Employment Opportunity Commission
1800 G Street, N. W.
Washington, D. C. 20506

Case File No. 6-12-9417

FILING DATE Nov. 2, 1966

(please print or type)

1 YOUR NAME: Mrs. Gussie Lee Mickel — EQUAL EMPLOYMENT OPPORTUNITY COMMISSION — PHONE NUMBER

STREET ADDRESS: 854 S. Harvin St.

CITY: Sumter, S.C. — STATE — ZIP CODE: 29150

2 WAS THE DISCRIMINATION BECAUSE OF: (please check one)

[X] Race or Color [ ] Religious creed [ ] National origin [ ] Sex — (specify)

3 Who discriminated against you? Give the name and address of the employer, labor organization, employment agency and/or apprenticeship committee. If more than one, list all.

NAME Campbell Soup Company

STREET ADDRESS Sumter, S.C.

CITY _____ STATE _____ ZIP CODE _____

AND (other parties if any) _____

4 Have you filed this charge with a state or local government agency? [X] Yes [ ] No

5 If your charge is against a company or a union, how many employees or members? Number [ ] Do Not Know

6 The most recent date on which this discrimination took place: Month September Day _____ Year 1966

7 Explain what unfair thing was done to you:

I passed the test for employment at the Employment Office for Campbell Soup Co., in Feb. 1965. In Aug. 1966 I took a physical, but did not pass it. I was told that my teeth were too bad. However I know for certainy that there are some white people working at the local Plant with teeth just as bad as mine, or worst. I went back in September 1966 and asked the mannager to let me work, and that I would have my teeth fixed. I was told that the Plant did not did not hire people who need to work, but rather hire people who qualified. I was also told that I cannot see with or without glasses, but that is not true. Your Office find cause to fild a suit agains the Exide Battery Plant here in Sumter, but the ruling was in favor of the Company. My daughter is suffering along with me. For every where she goes to look for a job, and her address is known that is the end. She is told that no jobs are available. I believe that I am being discriminated against because of the suit, and because I am a Negro.

(use other side of this page if necessary)

8 I SWEAR OR AFFIRM THAT I HAVE READ THE ABOVE CHARGE AND THAT IT IS TRUE TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

DATE 10/31/66 Mrs. Gussie Lee Mickel (SIGN HERE)

Subscribed and sworn to before me this 31 day of October 1966

J. Philip Benbury (NAME) _____ (TITLE)

NOTARY PUBLIC OF SO. CAROLINA
MY COMMISSION EXPIRES AT THE

FORM APP. BUR. OF BUDGET • NO. 124 R031

FORM EEOC • 5 (REV. 2-66)

1968, March 5

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

IDELL D. KINGWOOD, et al., Plaintiffs, v. CAMPBELL SOUP COMPANY, INC., A New Jersey Corporation, et al., Defendants.	CIVIL ACTION NO. 67-167 REQUEST FOR ADMISSIONS

Campbell Soup Company (Sumter Plant) Inc., hereinafter called this Defendant, requests James Parham, hereinafter called this Plaintiff, within 10 days after service of this request, to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

1. That each of the following documents, which are exhibited with this request and will again be produced for inspection upon reasonable request at the office of this Defendant's attorneys on any day within 10 days after the service of this request, is genuine:

a. Application for Employment dated May 30th, 1966 and signed James F. Parham, a copy of which is annexed hereto. This document is the application for employment filed by this Plaintiff with the Defendant on May 30, 1966.

b. Petition to Chairman, Equal Employment Opportunity Commission, dated October 4, 1966, signed by James Parham, among others. This is the document which was signed by this Plaintiff, and other persons, during a meeting held in Sumter, South Carolina, on October 4, 1966.

2. That each of the following statements is true:

a. That the said Application for Employment, exhibited with this request, was filed by this Plaintiff with this Defendant on May 30, 1966, and is the only written application for employment filed by this Plaintiff with either of the Defendants.

b. That the said Petition, exhibited with this request, was filed by or on behalf of this Plaintiff with the Equal Employment Opportunity Commission in Washington, D. C., sometime in October, 1966.

c. The said Petition, exhibited with this request, was not sworn to by this Plaintiff.

d. With the exception of the said Petition, exhibited with this request, this Plaintiff has not filed any type of unfair employment practice charge with the Equal Employment Opportunity Commission or any of its representatives against either of the Defendants at any time prior to the institution of this proceeding.

e. This Plaintiff has never been denied permission by either of the Defendants or any of their representatives to file an application for employment.

f. A manual dexterity test has never been administered to this Plaintiff by either of the Defendants or any of their representatives or by the South Carolina Employment Security Commission or any of its representatives.

g. This Plaintiff has never requested permission from either of the Defendants or their representatives or from the South Carolina Employment Security Commission or any of its representatives to take a manual dexterity test.

Robert T. Thompson

The Daniel Building
Greenville, S. C. 29602

Homer L. Deakins, Jr.

Attorneys for Campbell Soup Company
(Sumter Plant) Inc.

APPLICATION FOR EMPLOYMENT

CAMPBELL SOUP COMPANY — (SUMTER PLANT) INC.

AN EQUAL OPPORTUNITY EMPLOYER

LIST NOTHING WHICH WOULD INDICATE NATIONAL ORIGIN, RACE, CREED OR COLOR

PERSONAL

Date May 30th 1966 Social Security Number 247-20-6165

Name Parham James F
(Please Print Name) (Last) (First) (Middle)

Address 202 Brandt St Sumter 29150 S.C. Telephone 775-1834
(Street & Number) (City) (Zone) State

Male ✓ Female ____ Age 45 Date of Birth 8/8/20 Are you a Citizen? Yes ✓ No ____
(Month, Day, Year)

Marital Status: Single ____ Divorced ____ Married ✓ Widow(er) ____ No. of Children (4) Seven

Height 5'7" Weight 208 Is anyone dependent upon you for support? yes Who? Family.

What relatives do you have in our employ? None
(Name and Relationship)

Have you ever been employed by this Company? NO If Yes, From ____ To ____
(Yes or No)

In case of emergency notify Wife Address Same as above Telephone 5-1837

List any Physical Defects or Serious Illnesses ____

Shift Preferred Night or day Date Available Any except Saturday

Position Desired Plumbing & Steam fitting through the Team. Pay Expected ($2.00 or more per hour.) How were you recommended to us?

PREVIOUS EMPLOYMENT

(List Most Recent Job First)

EXPERIENCE

COMPANY (Name) / (Address) / (City & State)	TYPE OF WORK PERFORMED	DATE EMPLOYED	REASON FOR LEAVING	SALARY
Parham Plumbing 202 Brandt St Sumter, S.C.	Plumbing	From 1951 To present	Closing out	$300
South Side Plumbing West Virginia		From ____ To 1963 4 month	work completed	$285 a hr.
Navy yard Charleston S.C.	Pipe Fitting	From ____ To 1964	Assignment ended.	$1.285 a. h.

EDUCATION

EDUCATION	NAME OF SCHOOL AND LOCATION	DATES ATTENDED	GRADE AVERAGE	HIGHEST GRADE COMPLETED
Grade School			B.	
High School	Morris College	1938-1941		4 yr. high.
College or University	Tuskegee Inst	1946-51	C+	4 yr. College
Correspondence or Other				

Have you ever been arrested? _____ If yes, list dates and places: _____

Are you now or have you ever been a member of the Communist Party? No N/ Yes _____

Are you now or have you ever been a member of any party or associated with any group which advocates the overthrow of the government of the United States? No

Are you now or have you ever been a member of or associated with any organization which has been declared to be subversive by the Attorney General of the United States? Yes _____ No _____.

If the answer to any of the above is Yes, please explain fully: _____

Have you ever received Workmen's Compensation for any disability incurred in previous employment? No

If yes, please explain: _____

Military Service: Branch Army Date Inducted 5/20/41 Date of Discharge 1943 Dec.

Grade or Rank Corporal Military Job Dispatcher, Clerk Type of Discharge Honorable

Give three character references. Do not include relatives and former employers.

Name Frank Robert Jones Address 332½ Manning Ave.

Name Mr. Gordan Address City Hall Sumter S.C.

Name Eugene Johnson Address 332½ Manning Ave.

I agree to submit a birth certificate or other evidence to substantiate my age. I have rechecked this application for errors and understand that the furnishing of misinformation or the withholding of information may subject me to immediate dismissal.

Witness _____ Signature X [signature]

DO NOT WRITE BELOW THIS LINE

Medical Exam: Passed _____ Rejected _____ Restrictions: _____ Date _____ Dr's. Initials: _____

DATE	DEPARTMENT	POSITION	RATE	REMARKS

PETITION:

To: Chairman, Equal Employment Opportunity Commission

We, and each of us, the undersigned have found on many occasions that the SWANSON FROZEN FOOD DIVISION, of the Campbell Soup Company Located at Sumter, South Carolina practices discrimination Toward Negroes and Toward me the undersigned in the screening and placement on JOBS NOW Available and WERE AVAILABLE SINCE the Company Came To Sumter. Because this Company used and USES the SOUTH CAROLINA Employment SECURITY COMMISSION To receive our applications, we are subjected to discrimination because that Commission has been found To act with discrimination towards Negroes - delayed referrals or no referrals. We, and each of us, want this Company's Division Investigated and some effort made To get us more of the Jobs there.

Dated: October 4, 1966.

Signed:

	NAME	Address:
ATC 747	1. Lydia Mae Pettis	413 Pinewood Road
748	2. Alice Lee Frazier	44 S. St. Sumter
749	3. Annie Mae Scoings	15 Mitchell St
750	4. Mary Lee Lucas	R11 Box 101 Shaw's S.C.

Page one of three Pages

		Name	Address:
AT 6-10-751	1.	Mrs Virginia Burgess	R.F.D. 5, Box 338-B Sumter, S.C.
752	2.	Mrs Wilkes C Davis	526 Dr. Sumter St
753	3.	Mrs. Ruth D. Knight	19 Jackson ave
754	4.	Mrs Ida mae Jones	Route 2 Box 51C
755	5.	Mrs Phoebe Davis	21 B 117 a dalzell c
756	6.	Miss Gladys Romeo	P.O. Box 163 Pinewood, S.C
757	7.	Mrs. Delois Caldwell	Box Office Pinewood S.C.
758	8.	Mrs Cathrine Preston	Rt 2 Box 181
759	9.	Mary Blondin	Rantl 1 Box 924
760	10.	Mrs. Margaret Elizabeth Wright	R.F.D. 5 Box 86-A Sumter,
761	11.	Mrs Hattie mae McCoy	Rte 6, 1 Box 238-A Sumter
762	12.	Miss Odatte L. Ruston	Rte 2 Box 18 Manning
763	13.	Mrs Mary E. Hicks	Rte 2 box 177 Manning S.C.
764	14.	Mrs Mary McCants	Rte 1 Box 90-B Alcolu S.C.
765	15.	Mrs Evelyn Davis	Alcolu S.C. Route 1 Box 96-
766	16.	Nora M. Perry	Pinewood S.C.
767	17.	Ethel mae Burgess	R.D. 1 Box 55 Alcolu S.C.
768	18.	Carrie Mae Davis	Alcolu S C Box 86 R.1
769	19.	Lucie Bracey	Pinewood S.C.
770	20.	Mrs Metta Brunson	R. 2 Box 211-A Pinewood S.C.
771	21.	Mr Silas walker Jr	R 1 Box 110 Galivants
772	22.	Jannie G. Jordan	202 Broad St.
773	23.	Minnie Lee Mickel	

Dated: October 4, 1964

I, Dorothy V. Sampson do certify that I personally saw each of the subscribers sign his or her name to this petition on the date above noted.

Dorothy V. Sampson
39 Washington Street
Sumter, South Carolina.

[1968, March 5]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

IDELL D. KINGWOOD, et al., Plaintiffs, v. CAMPBELL SOUP COMPANY, INC., A New Jersey Corporation, et al., Defendants.	CIVIL ACTION NO. 67-167 REQUEST FOR ADMISSIONS

Campbell Soup Company (Sumter Plant) Inc., hereinafter called this Defendant, requests Catherine Preston, hereinafter called this Plaintiff, within 10 days after service of this request, to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

1. That each of the following documents, which are exhibited with this request and will again be produced for inspection upon reasonable request at the office of this Defendant's attorneys on any day within 10 days after the service of this request, is genuine:

a. Application for Employment dated April 26, 66 and signed Catherine Preston, a copy of which is annexed hereto. This document is the application for employment filed by this Plaintiff with this Defendant on April 26, 1966.

b. Petition to Chairman, Equal Employment Opportunity Commission, dated October 4, 1966, signed by Catherine Preston, among others. This is a document which was signed by this Plaintiff, and other persons, during a meeting held in Sumter, South Carolina, on October 4, 1966.

2. That each of the following statements is true:

a. The said Application for Employment, exhibited with this request, was filed by this Plaintiff with this Defendant, on April 26, 1966, and is the only written application for employment filed by this Plaintiff with either of the Defendants.

b. The said Petition, exhibited with this request, was filed by or on behalf of this Plaintiff with the Equal Employment Opportunity Commission in Washington, D. C., sometime in October, 1966.

c. The Petition, exhibited with the request, was not sworn to by this Plaintiff.

d. With the exception of the said Petition, exhibited with this request, this Plaintiff did not file any type of unfair employment practice charge with the Equal Employment Opportunity Commission or any of its representatives against either of the Defendants at any time prior to the institution of this proceeding.

e. This Plaintiff has never been denied permission by either of the Defendants or any of their representatives to file an application for employment.

f. This Plaintiff has never completed the eighth grade at any school.

Robert T. Thompson

The Daniel Building
Greenville, S. C. 29601

Homer L. Deakins, Jr.

Attorneys for Campbell Soup Company (Sumter Plant) Inc.

Defts Ex 8 for Identif
Lfbe

APPLICATION FOR EMPLOYMENT

CAMPBELL SOUP COMPANY — (SUMTER PLANT) INC.

AN EQUAL OPPORTUNITY EMPLOYER

LIST NOTHING WHICH WOULD INDICATE NATIONAL ORIGIN, RACE, CREED OR COLOR

Date April 24, 60 Social Security Number 247-64-3698

Name Co. Preston Catherine
(Please Print Name) (Last) (First) (Middle)

Address Rt. 2 Box 191 Manning South Carolina Telephone
(Street & Number) (City) (Zone) State

PERSONAL

Male ____ Female ✓ Age 45 Date of Birth May 2
(Month, Day, Year)
Are you a Citizen? Yes ✓ No ____

Marital Status: Single ____ Divorced ____ Married ✓ Widow(er) ____ No. of Children 8 (26-14)

Height 5'5" Weight 145 Is anyone dependent upon you for support? Yes Who? Ernest, Albert, Jerome

What relatives do you have in our employ? Carrie Mae Daniel
(Name and Relationship)

Have you ever been employed by this Company? No If Yes, From unemployed To ____
(Yes or No)

In case of emergency notify Mrs. Sarah Lee Address Manning, S.C. Telephone 964-4

List any Physical Defects or Serious Illnesses None

Shift Preferred day Date Available ____

Position Desired ____ Pay Expected ____ How were you recommended to us?

PREVIOUS EMPLOYMENT

(List Most Recent Job First)

EXPERIENCE

COMPANY	TYPE OF WORK PERFORMED	DATE EMPLOYED	REASON FOR LEAVING	SALARY
Dupree (Name)		From ____ To ____		
(Address)				
(City & State)				
(Name)		From ____ To ____		
(Address)				
(City & State)				
(Name)		From ____ To ____		
(Address)				
(City & State)				

EDUCATION

EDUCATION	NAME OF SCHOOL AND LOCATION	DATES ATTENDED	GRADE AVERAGE	HIGHEST GRADE COMPLETED
Grade School				7th 2
High School	Cypress Ford Manning S.C.			
College or University				
Correspondence or Other				

Have you ever been arrested? No If yes, list dates and places: _____

Are you now or have you ever been a member of the Communist Party? No No Yes _____

Are you now or have you ever been a member of any party or associated with any group which advocates the overthrow of the government of the United States? No

Are you now or have you ever been a member of or associated with any organization which has been declared to be subversive by the Attorney General of the United States? Yes _____ No No.

If the answer to any of the above is Yes, please explain fully: _____

Have you ever received Workmen's Compensation for any disability incurred in previous employment? No

If yes, please explain: _____

Military Service: Branch No Date Inducted _____ Date of Discharge _____

Grade or Rank _____ Military Job _____ Type of Discharge _____

Give three character references. Do not include relatives and former employers.

Name Mr Edward Eaton Address Manning S.C.

Name Mr Leo Mathews Address Manning S.C.

Name Mr Douglas Welch Address Manning S.C. Rt 1

I agree to submit a birth certificate or other evidence to substantiate my age. I have rechecked this application for errors and understand that the furnishing of misinformation or the withholding of information may subject me to immediate dismissal.

Witness _____ Signature Y Catherine Preston

DO NOT WRITE BELOW THIS LINE

Medical Exam: Passed _____ Rejected _____ Restrictions: _____ Date _____ Dr's. Initials: _____

DATE	DEPARTMENT	POSITION	RATE	REMARKS

PETITION:

To: Chairman, Equal Employment Opportunity Commission

We, and each of us, the undersigned have found on many occasions that the SWANSON FROZEN FOOD DIVISION, of the Campbell Soup Company Located at Sumter, South Carolina practices discrimination Toward Negroes and toward me the undersigned in the screening and placement on JOBS NOW Available and WERE AVAILABLE SINCE the Company Came To Sumter. Because this Company used and USES the SOUTH CAROLINA Employment SECURITY COMMISSION to receive our applications, we are subjected to discrimination because that Commission has been found to act with discrimination towards Negroes - delayed referrals or no referrals. We, and each of us, want this Company's Division INVESTIGATED and some effort made to get us more of the Jobs There.

Dated: October 4, 1966.

Signed:

	NAME	Address:
AFC-10-747	1. Lydia Mae Pitts	413 Priscoad Road
748	2. Alice Rae Frazier	44 S. St. Sumter
749	3. Annie Mae Goings	15 Mitchell St
750	4. Mary Lee Lucas	R11 Box 101 Alcolu, S.C.

Page one of three pages

		Name	Address:
AT 6-10-751	1.	Mrs Virginia Burgess	Rt 5, Box 338-B Sumter, S.C.
752	2.	Mrs Walker C Davis	526 W. Sumter St
753	3.	Mrs. Ruth D. Knight	19 Simkins ave
754	4.	Mrs Ila mae Jones	Rute 2 Box 51C
755	5.	Mrs Phoebe Davis	71 B 117a Alcolu SC
756	6.	Miss Gladys Romeo	P.O. Box 163 Pinewood, S.C
757	7.	Mrs. Delois Baisden	Gen Delivery Pinewood S.C.
758	8.	Mrs Cathrine Mixton	Rt 2 Box 181
759	9.	Mary Blanding	Route 1 Box 94
760	10.	Mrs. Margaret Elizabeth Knight	Rt 5 Box 86-A Sumter,
761	11.	Mrs. Hattie mae McCoy	Rte 4 Box 238-A Sumter
762	12.	Miss Idabee M. Dixon	Rte 2 Box 18 Manning
763	13.	Mrs Mary E. Hicks	Rte 2 Box 177 Manning S.C.
764	14.	Mrs Mary McCants	Rte 1 Box 90-B Olanta S.C.
765	15.	Mrs Evelyn Young	Olanta SC Route 1 Box 96-
766	16.	Nora M. Perry	Pinewood S.C.,
767	17.	Ethel mae Burgess	RD. 1 Box 55 Olanta SC
768	18.	Carrie Mae Young	Olanta S C B. 86 R.1
769	19.	Lucie Bracey	Pinewood S.C.
770	20.	Mrs Meta Brunson	R. 2 Box 211-A Pinewood SC
771	21.	Mr Silas walker Jr	R 1 Box 110 Galivants
772	22.	Annie Y Graham	202 Broad St.
773	23.	Jessie Lee Mickel	

Dated: October 4, 1966

I, Dorothy V. Sampson do certify That I personally saw each of the subscribers sign his or her name to this petition on the date above noted.

Dorothy V. Sampson
39 Washington Street
Sumter, S. Carolina.

[1968, March 5]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

IDELL D. KINGWOOD, et al., Plaintiffs, v. CAMPBELL SOUP COMPANY, INC., A New Jersey Corporation, et al., Defendants.	CIVIL ACTION NO. 67-167 REQUEST FOR ADMISSIONS

Campbell Soup Company (Sumter Plant) Inc., hereinafter called this Defendant, requests Beulah Rhodes, hereinafter called this Plaintiff, within 10 days after service of this request, to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

1. That each of the following documents, which are exhibited with this request and will again be produced for inspection upon reasonable request at the office of this Defendant's attorneys on any day within 10 days after the service of this request, is genuine:

a. Application for Employment dated 5/20/66 and signed Beulah Rhodes, a copy of which is annexed hereto. This document is the application for employment filed by this Plaintiff with this Defendant on May 20, 1966.

b. Wonderlic Personnel Test, Form IV, dated 12/2/66, and signed Beulah Mae Rhodes, a copy of which is annexed hereto. This document is the Wonderlic Personnel Test which was administered to this Plaintiff by a representative of this Defendant on December 2, 1966.

c. Personal Health History Record, dated 12/5/66 and signed Beulah Rhodes, a copy of which is annexed hereto. This document was filled out by this Plaintiff at this Defendant's plant in Sumter, South Carolina, on December 5, 1966, prior to the time she was given a physical examination.

d. Pre-placement Physical Examination Record, dated 12/5/66 and signed by Beulah Mae Rhodes and R. E. McDowell, M. D., respectively, a copy of which is annexed hereto. This is a document which was filled out by the said Dr. McDowell at this Defendant's plant in Sumter, South Carolina, on December 5, 1966, after this Plaintiff had been given a physical examination by him.

e. Letter to Mrs. Beulah Rhodes from R. E. McDowell, M. D., dated January 16, 1967, and signed by the said Dr. McDowell, a copy of which is annexed hereto. This document is a copy of a letter sent by the said Dr. McDowell to this Plaintiff on or about January 16, 1967, describing the results of the said physical examination he had administered to this Plaintiff on December 5, 1966.

f. Charge of Discrimination dated 9/22/66, and signed by Beulah Rhodes, a copy of which is annexed hereto. This document is the Charge of Discrimination filed by this Plaintiff against this Defendant with the Equal Employment Opportunity Commission on or about September 29, 1966.

g. Charge of Discrimination dated December 6, 1966, and signed by Beulah Rhodes, a copy of which is annexed hereto. This document is the Charge of Discrimination filed by this Plaintiff against this Defendant with the Equal Employment Opportunity Commission on or about December 6, 1966.

2. That each of the following statements is true:

a. The said Application for Employment, exhibited with this request, was filed by this Plaintiff with this Defendant on May 20, 1966, and is the only written form of application for employment filed by this Plaintiff with either of the Defendants.

b. The said Wonderlic Personnel Test, exhibited with this request, was administered to this Plaintiff by a representative of this Defendant on December 2, 1966.

c. This Plaintiff was given a physical examination at this Defendant's plant in Sumter, South Carolina, by Dr. R. E. McDowell on December 5, 1966, and immediately thereafter she was advised by the said Dr. McDowell that she had failed to pass the said test.

d. The said Personal Health History Record, exhibited with this request, was filled out and signed by this Plaintiff at this Defendant's plant in Sumter, South Carolina, on December 5, 1966, prior to the time she was given a physical examination by Dr. R. E. McDowell.

e. The said Pre-Placement Physical Examination Record, exhibited with this request, was filled out by Dr. R. E. McDowell and was signed by both him and this Plaintiff at this Defendant's plant in Sumter, South Carolina, on December 5, 1966, after this Plaintiff had been given a physical examination by the said Dr. McDowell.

f. The original of the said letter to this Plaintiff from Dr. R. E. McDowell, a copy of which is exhibited with the request, was received by this Plaintiff through the United States mail, shortly after January 16, 1967.

g. This Plaintiff did not furnish to either of the Defendants or any of their representatives any information concerning the physical condition of this Plaintiff which was contradictory to the statements contained

in the said letter to this Plaintiff from Dr. R. E. McDowell, a copy of which is exhibited with this request, at any time prior to the institution of this proceeding.

h. The said letter to this Plaintiff from Dr. R. E. McDowell, a copy of which is exhibited with this request, specifies the reasons given by the said Dr. McDowell for recommending that this Plaintiff was not physically qualified to work at this Defendant's plant in Sumter, South Carolina, and such reasons were based upon his examination of this Plaintiff.

i. The said Charge of Discrimination dated 9/22/66, exhibited with this request, was filed by or on behalf of this Plaintiff sometime in September, 1966, with the Equal Employment Opportunity Commission.

j. The said Charge of Discrimination dated December 6, 1966, exhibited with this request, was filed by or on behalf of this Plaintiff on or about December 6, 1966, with the Equal Employment Opportunity Commission.

k. With the exception of the two documents mentioned in paragraphs 2 h and 2 i above, this Plaintiff did not at any time prior to the institution of this proceeding file any other written document with the Equal Employment Opportunity Commission or any of its representatives alleging that either of the Defendants had discriminated in any manner against her or any other persons.

l. This Plaintiff has never been denied permission by either of the Defendants or any of their representatives to file an application for employment.

Robert T. Thompson

Robert T. Thompson

The Daniel Building
Greenville, S. C. 29602

Homer L. Deakins, Jr.

Homer L. Deakins, Jr.

Attorneys for Campbell Soup Company (Sumter Plant) Inc.

APPLICATION FOR EMPLOYMENT

CAMPBELL SOUP COMPANY — (SUMTER PLANT) INC.

AN EQUAL OPPORTUNITY EMPLOYER

LIST NOTHING WHICH WOULD INDICATE NATIONAL ORIGIN, RACE, CREED OR COLOR

Dept Eq 17 16 for Gleaut LBee

PERSONAL

Date 5-20-66 Social Security Number 251-72-8909

Name [illegible] (Please Print Name) (Last) (First) (Middle)

Address [illegible] (Street & Number) (City) (Zone) State Telephone none

Male ____ Female X Age 37 Date of Birth 5-19-1929 (Month, Day, Year) Are you a Citizen? Yes X No ____

Marital Status: Single ____ Divorced ____ Married X Widow(er) ____ No. of Children 7 (18-6)

Height 5-3 Weight 170 Is anyone dependent upon you for support? 3 Who? Kids

What relatives do you have in our employ? ____ (Name and Relationship)

Have you ever been employed by this Company? No (Yes or No) If Yes, From ____ To ____

In case of emergency notify Ed Wife Address [illegible] Telephone X

List any Physical Defects or Serious Illnesses None

Shift Preferred Day Time Date Available Any Day

Position Desired Any Line Job Pay Expected $1.75 How were you recommended to us?

From letter paper on bulletin board

PREVIOUS EMPLOYMENT

(List Most Recent Job First)

EXPERIENCE

COMPANY	TYPE OF WORK PERFORMED	DATE EMPLOYED	REASON FOR LEAVING	SALARY
(Name) Linda Conlick (Address) 119 Dunway Dr (City & State) [illegible]	Secretarial	From March To Sept 66	Moved to Stephenville City	1.30
(Name) (Address) (City & State)		From To		
(Name) (Address) (City & State)		From To		

EDUCATION

EDUCATION	NAME OF SCHOOL AND LOCATION	DATES ATTENDED	GRADE AVERAGE	HIGHEST GRADE COMPLETED
Grade School				
High School	Sinclair	[illegible]	[illegible]	4
College or University				
Correspondence or Other				

Have you ever been arrested? _____ If yes, list dates and places: _____

Are you now or have you ever been a member of the Communist Party? No _____ Yes _____

Are you now or have you ever been a member of any party or associated with any group which advocates the overthrow of the government of the United States? _____

Are you now or have you ever been a member of or associated with any organization which has been declared to be subversive by the Attorney General of the United States? Yes _____ No _____.

If the answer to any of the above is Yes, please explain fully: _____

Have you ever received Workmen's Compensation for any disability incurred in previous employment? _____

If yes, please explain: _____

Military Service: Branch _____ Date Inducted _____ Date of Discharge _____

Grade or Rank _____ Military Job _____ Type of Discharge _____

Give three character references. Do not include relatives and former employers.

Name _____ Address _____

Name _____ Address _____

Name _____ Address _____

I agree to submit a birth certificate or other evidence to substantiate my age. I have rechecked this application for errors and understand that the furnishing of misinformation or the withholding of information may subject me to immediate dismissal.

Witness _____ Signature _____

DO NOT WRITE BELOW THIS LINE

Medical Exam: Passed _____ Rejected _____ Restrictions: _____ Date _____ Dr's. Initials: _____

DATE	DEPARTMENT	POSITION	RATE	REMARKS

WONDERLIC

PERSONNEL TEST

FORM IV

NAME Beulah mae Rhodes Date 12-2-60
(Please Print)

READ THIS PAGE CAREFULLY. DO EXACTLY AS YOU ARE TOLD.
DO NOT TURN OVER THIS PAGE UNTIL YOU ARE
INSTRUCTED TO DO SO.

This is a test of problem solving ability. It contains various types of questions. Below is a sample question correctly filled in:

REAP is the opposite of

1 obtain, 2 cheer, 3 continue, 4 exist, 5 sow ..... [5]

The correct answer is "sow." (It is helpful to underline the correct word.) The correct word is numbered 5. Then write the figure 5 in the brackets at the end of the line.

Answer the next sample question yourself.

Gasoline sells for 23 cents per gallon. What will 4 gallons cost? ..... [ ]

The correct answer is 92¢. There is nothing to underline so just place "92¢" in the brackets.

Here is another example:

MINER MINOR — Do these words have

1 similar meaning, 2 contradictory, 3 mean neither same nor opposite? ..... [ ]

The correct answer is "mean neither same nor opposite" which is number 3 so all you have to do is place a figure "3" in the brackets at the end of the line.

When the answer to a question is a letter or a number, put the letter or number in the brackets.
All letters should be printed.

This test contains 50 questions. It is unlikely that you will finish all of them, but do your best. After the examiner tells you to begin, you will be given exactly 12 minutes to work as many as you can. Do not go so fast that you make mistakes since you must try to get as many right as possible. The questions become increasingly difficult, so do not skip about. Do not spend too much time on any one problem. The examiner will not answer any questions after the test begins.

Now, lay down your pencil and wait for the examiner to tell you to begin!

Do not turn the page until you are told to do so.

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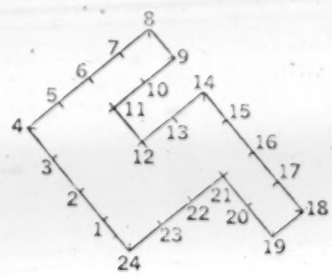
PRINTED IN U.S.A.

1. BITTER is the opposite of
   1 acid, 2 cutting, 3 sharp, 4 sweet, 5 tart ..... [4]
2. The Sixth month of the year is
   1 October, 2 August, 3 May, 4 June ..... [4]
3. In the following set of words, which word is different from the others?
   1 cinnamon, 2 ginger, 3 clove, 4 tobacco, 5 mint ..... [4]
4. MEDIEVAL MEDICAL — Do these words have
   1 similar meaning, 2 contradictory, 3 mean neither same nor opposite? ..... [___]
5. Look at the row of numbers below. What number should come next?
   49 42 35 28 21 14 ? ..... [___]
6. In the following set of words, which word is different from the others?
   1 slight, 2 vast, 3 massive, 4 bulky, 5 immense ..... [___]
7. FAITHFUL is the opposite of
   1 true, 2 loyal, 3 firm, 4 fickle, 5 sure ..... [4]
8. Sugar sells at 8½ cents per pound. How much will you save by buying a 100 pound sack at $8.25? [___]
9. IGNITE IGNORANT — Do these words have
   1 similar meanings, 2 contradictory, 3 mean neither same nor opposite? ..... [___]
10. Are the meanings of the following sentences: 1 similar, 2 contradictory, 3 neither similar nor contradictory? Love me, love my dog. He that strikes my dog would strike me if he dared. ..... [1]
11. CLEAN is the opposite of
    1 disinfect, 2 scour, 3 scrub, 4 debase, 5 sponge ..... [___]
12. Assume the first 2 statements are true. Is the final one: (1)true, (2)false, (3)not certain?
    The voice is in tune with the piano. The piano is in tune with the cello. The cello is in tune with the voice. ..... [3]
13. In the following set of words, which word is different from the others?
    1 ill-matched, 2 unsuitable, 3 inconsistent, 4 accordant, 5 contrary ..... [___]
14. Assume the first 2 statements are true. Is the final one: (1)true, (2)false, (3)not certain?
    These girls are normal children. All normal children are active. These girls are active. [___]
15. Two of the following proverbs have the similar meaning. Which ones are they? ..... [12]
    1. Those that dance must pay the music.
    2. The tongue is the enemy of the neck.
    3. A golden hammer breaks an iron door.
    4. Who pays the piper calls the tune.
    5. A barking dog never bites.
16. CONQUER is the opposite of
    1 overpower, 2 submit, 3 subject, 4 vanquish, 5 master ..... [___]
17. Suppose you arranged the following words so that they made a true statement. Then print the last letter of the last word as the answer to this problem.
    than fortunate rich be Better ..... [___]
18. ATTACK is the opposite of
    1 aid, 2 assail, 3 combat, 4 besiege, 5 storm ..... [3]
19. ILLICIT ILLITERATE — Do these words have
    1 similar meanings, 2 contradictory, 3 means neither same nor opposite? ..... [___]
20. Are the meanings of the following sentences: 1 similar, 2 contradictory, 3 neither similar nor contradictory? No wonder can last more than three days. All good things are three. [___]
21. IDEA IDEAL — Do these words have
    1 similar meanings, 2 contradictory, 3 means neither same nor opposite? ..... [___]
22. A boy is 15 years old and his sister is twice as old. When the boy is 25 years old, what will be the age of his sister? ..... [___]
23. Are the meanings of the following sentences: 1 similar, 2 contradictory, 3 neither similar nor contradictory? Elbow-grease is the best polish. The work proves the workman. [___]
24. This geometric figure can be divided by a straight line into two parts which will fit together in a certain way to make a perfect square. Draw such a line by joining two of the numbers. Then write these numbers as the answer. ..... [___]



25. CHASTEN CHASTISE — Do these words have
    1 similar meanings, 2 contradictory, 3 mean neither same nor opposite? ..... [___]
26. Two of the following proverbs have similar meanings. Which ones are they? ..... [___]
    1. Get money first; virtue comes afterward.
    2. Look not upon the wine when it is red.
    3. It's an ill wind that blows nobody good.
    4. No hill is so steep but an ass loaded with gold can climb it.
    5. The watched pot never boils.

27. Assume the first 2 statements are true. Is the final one: (1)true, (2)false, (3)not certain?
Great men are important. I am important. I am a great man. ..... [3]

28. PRIDE is the opposite of
1 reserve, 2 self-esteem, 3 self-abasement, 4 disdain, 5 arrogance ..... [___]

29. In 66 days a boy saved one dollar and ninety eight cents. What was his average daily saving? [___]

30. PITEOUS PITIABLE — Do these words have
1 similar meanings, 2 contradictory, 3 mean neither same nor opposite? ..... [___]

31. How many of the five items listed below are exact duplicates of each other? ..... [___]

Waterhouse, H. I.	Waterous, H. I.
Lindquist, W. C.	Lundquist, W. C.
Pollauf, A. S.	Pollauf, A. S.
Rosenfeld, F. E.	Rosenfield, F. E.
Sivertsen, P. B.	Sivertsen, B. P.

32. Are the meanings of the following sentences: 1 similar, 2 contradictory, 3 neither similar nor contradictory? Nothing is so bad as not to be good for something. He that hopes not for good fears not evil. ..... [3]

33. APPEAL is the opposite of
1 beseech, 2 entreat, 3 request, 4 deny, 5 invoke ..... [___]

34. Which number in the following group of numbers represents the smallest amount?
10 3 2 .8 .888 .96 ..... [.8]

35. Assume the first 2 statements are true. Is the final one: (1)true, (2)false, (3)not certain?
Great men are applauded. I am applauded. I am a great man. ..... [3]

36. A clock was exactly on time at noon on Monday. At 8 P.M. on Tuesday, it was 128 seconds slow. At that same rate, how much did it lose in ½ hour? ..... [___]

37. Two of the following proverbs have the similar meaning. Which ones are they? ..... [12]

1. A man without money is a bow without an arrow.
2. Money is a merry fellow.
3. Fine words butter no parsnips.
4. Don't try to carry water cans on both shoulders.
5. The hot coal burns, the cold one blackens.

38. A train travels 70 feet in $\frac{1}{10}$ second. At this same speed, how many feet will it travel in 3½ seconds? ..... [___]

39. Suppose you arrange the following words so that they make a complete sentence. If it is a true statement, mark (T) in the brackets: if false, put an (F) in the brackets.
of the Envy enemy is honor ..... [___]

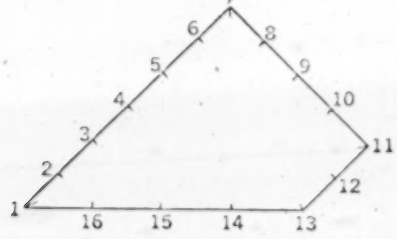
40. Assume the first 2 statements are true. Is the final one: (1)true, (2)false, (3)not certain?
Marion called Glen. Glen called Jean. Marion did not call Jean. ..... [3]

41. One number in the following series does not fit in with the pattern set by the others. What should that number be ? $\frac{1}{16}$ $\frac{1}{8}$ $\frac{1}{4}$ $\frac{1}{2}$ 1 2 ..... [16]

42. ASK is the opposite of
1 entreat, 2 crave, 3 demand, 4 appeal, 5 deny ..... [44]

43. When potatoes are selling at $0.0125 a pound, how many pounds can you buy for a dollar? ..... [___]

44. This geometric figure can be divided by a straight line into two parts which will fit together in a certain way to make a perfect square. Draw such a line by joining two of the numbers. Then write the numbers as the answer. ..... [___]



45. In printing an article of 21,000 words, a printer decides to use two sizes of type. Using the larger type, a printed page contains 1200 words. Using the smaller type, a page contains 1500 words. The article is allotted 16 full pages in a magazine. How many pages must be in the larger type? ..... [___]

46. Two of the following proverbs have similar meanings. Which ones are they? ..... [___]

1. Mothers' darlings make but milksop heroes.
2. Still water runs deep.
3. Mother knows best.
4. Wide will wear but narrow will tear.
5. As a twig is bent, so is the tree inclined.

47. For $4.50 a grocer buys a case of oranges which contains 14 dozen. He knows that four dozen will spoil before he sells them. At what price per dozen must he sell the good ones to gain ⅛ of the whole cost? ..... [___]

48. Assume the first 2 statement are true. Is the final one: (1)true, (2)false, (3)not certain?
All Elks are active persons. Some of the people in this room are active. Some of the people in this room are Elks. ..... [___]

49. What is the next number in this series? 2 1 .5 .25 .125 ? ..... [___]

50. Three men form a partnership and agree to divide the profits equally. X invests $4,500; Y invests $4,500; and Z invests $1,000. If the profits are $1,500, how much less does X receive than if the profits were divided in proportion to the amount invested? ..... [___]

PERSONAL HEALTH HISTORY RECORD

Campbell SOUP Company

I understand that fraudulent or misleading statement of fact is grounds for dismissal

Date of Examination 12/5/6 C

Date of Hire

NAME: (Last) Rhodes	(First) Beulah	(Middle) Mae	Address 1425 Harris St. Sumter	Phone 3-7187

PERSONAL DATA:			Sex	Age 37	Date of Birth MAY 14 1922	Place of Birth N C Bethlehem Co	
Single	Widower	Own Home	Live with Husband or Wife	No. of Dependent Relatives 1	Service in the Armed Forces	Yes	No
Married X	Separated	Rent Home X	Live with Parents	No. of Persons in Household 11	In Which Branch?		
Widow	Divorced	Board	Live with Relatives	Date of Marriage 6-24-47	Date Entered	Date Discharged	

PERSONAL PHYSICIAN (Name) Winter Dr Mrs	Address 24 Main	Phone 3-3706

FAMILY HISTORY	Ages	State of Health	If Dead – Give Cause	Age at Death
Wife, Husband	37	Good		
Father	65	Good		
Mother	47	Poor		
Brothers	31	Good		
Sisters	45		Chd Birth	27
Children				

Has your Blood Relative ever had?	Yes	No	Which Relative?
Arthritis or Rheumatism		X	Self
Hay Fever, Asthma or Hives		X	Father
Ulcer of Stomach or Duodenum		X	Mother
Heart Trouble		X	Brother
Nerve Disorder			
High Blood Pressure		X	Sister
Kidney Trouble		X	Mother
Mental Illness			
Tuberculosis			
Diabetes			

HAVE YOU EVER HAD, OR HAVE YOU NOW (Check either Yes or No after each item, Put a Question mark (?) if you don't know.)

Check Each Item	Yes	No	Check Each Item	Yes	No	Check Each Item	Yes	No	Check Each Item	Yes	No
Alcoholism?		X	Cyst, Growth or Tumor	?	X	Indigestion, Frequent or Severe	?		Shortness of Breath		X
Allergy? Hives?		X	Deformity? Amputation?		X	Injury, Serious? Car	X		Shoulder Pain? Arm or Hand Pain?		X
Anemia? Other Blood Condition?		X	Depression? Excessive Worry?		X	Joints: Painful? Swollen?		X	Sinus Trouble? Sinus Operation?		X
Anxiety? Nervousness?		X	Diabetes		X	Kidney or Bladder Trouble		X	Skin Trouble? Rash? Eczema?		X
Appetite, Loss of		X	Ear Trouble? Ear Discharges?		X	Knee Pain? Trick, Locked Knee?		X	Sleeping Trouble		X
Arthritis? Rheumatism?		X	Emotional disturbances		X	Liver Disease? Jaundice?		X	Sores, Chronic		X
Asthma? Hay Fever?		X	Epilepsy		X	Lung Trouble, Injury, Disease?		X	Spine Disease		X
Backache? Back Injury?		X	Eye Trouble other than Glasses		X	Malaria	?	X	Stomach Trouble? Ulcer?		X
Blackouts? Dizzy Spells?		X	Fainting or Dizziness		X	Medicine or Serums: Ill Effects?	?	X	Swelling: Ankle, Feet or Legs?		X
Blindness? Double Vision?		X	Fatigued Easily		X	Meningitis		X	Teeth Trouble		X
Blood Disease		X	Foot Trouble or Painful Feet		X	Mental Illness		X	Testicle Trouble		X
Bone Disease? Joint Disease?		X	Fractured Bone or Dislocation		X	Migraine Headaches		X	Throat Trouble, Severe		X
Bowel Trouble		X	Gall Stones		X	Nausea or Vomiting, Severe, Chronic		X	Thyroid Trouble? Goiter?		X
Brace or Cast for Back		X	Gall Bladder Trouble		X	Nervous Breakdown		X	Tuberculosis		X
Brain Disease		X	Gout	?	X	Neuritis? Nerve Disorder?		X	Ulcers? Digestive Trouble?		X
Breast Trouble		X	Head Injury? Brain Concussion?		X	Nose Trouble, Severe		X	Urination Difficulty		X
Bronchitis, Chronic		X	Headaches, Frequent or Severe		X	Palpitation or Pounding Heart		X	Urine: Sugar? Albumin? Blood?		X
Cancer? Tumor?		X	Hearing Difficulty? Use an Aid?		X	Paralysis	?	X	Varicose Veins, Phlebitis?		X
Chest Pain or Pressure		X	Heart Trouble		X	Piles? Rectal Disease?		X	Venereal Disease		X
Chills, Fever, or Night Sweats		X	Heat-Stroke? Sun-Stroke?		X	Pilonidal Infection		X	Vision Difficulty		X
Circulation Disturbances		X	Hernia or Rupture? Wear a Truss?		X	Prostate Trouble		X	Weakness? Fatigue, Severe?		X
Colitis		X	High Blood Pressure		X	Rheumatic Fever		X	Weight: Recent Gain or Loss		X
Cough, Chronic		X	Hoarseness, Severe		X	Shock		X			
THIS SECTION FOR WOMEN ONLY.			Treated for Female Disorder			Number of Pregnancies			Duration of Period		
Had Female Operation			Had Painful Menstruation			Interval Between Periods			Date of Last Period		

INFECTIOUS ILLNESSES (Check those you have had)

Abscess, Boil		Dengue		Influenza		Parasites		Strep Throat		Small Pox	
Athletes Foot		Diphtheria		Measles		Pleurisy		Typhoid		Tularemia	
Chicken Pox	X	Dysentery		Mumps		Pneumonia		Undulant Fever		Typhus	
Cystitis		Fungus Infection		Nephritis		Polio		Valley Fever		Yellow Fever	
Carbuncle		Infectious Mononucleosis		Scarlet Fever				Worms			

INOCULATIONS (Check by giving dates:) Small Pox: Tetanus: Polio: Influenza: Others:

PLEASE CONTINUE	Yes	No	PLEASE CONTINUE	Yes	No
Have you ever had illnesses or injuries requiring Doctors' care, other than those listed above?		X	Have you any physical complaint, impairment or disability at present?		X
Have you ever had an operation; or have you ever been advised to have an operation? C. Section; Removal Rt. eye	X		Have you any condition requiring a special work assignment if you are hired?		X
Have you ever been a patient in any kind of a hospital or institution?	X		Have you ever been forced to give up a job because of health reasons?		X
Have you ever been disqualified for full duty in, or discharged from the armed forces, for medical reasons?		X	Have you ever been rejected because of medical reasons for life insurance? For employment?		X
Have you lost time from work due to illness or injury during the last two years?		X	Have you ever been refused a drivers' license?		X
Have you ever worked in an industry using radioactive materials?		X	Have you ever been treated by X-Rays? Routine Have you ever been treated with radio-active material?	X	
Have you ever worked in mining, foundry, sand blasting, steel, or a chemical industry? Have you ever worked on a dusty job?		X	Have you consulted or been treated by clinics, physicians, healers, or other practitioners within the past five years?		X
Have you ever filed a compensation claim, or received workmens' compensation benefits as a result of industrial injury or disease?		X	Are you taking any medicine, or drug or any other treatment now?		X
Has your work ever been limited or restricted because of your health or a disability?		X	Have you any other health problems you would like to discuss with the doctor?		X
Have you ever received a pension or award for disability or for military service?		X	Would you say the state of your health is – – ☐ Excellent ☒ Good ☐ Fair ☐ Poor ☐ ?		

I certify that the above information supplied by me is true, and complete to the best of my knowledge. I hereby authorize any doctor, clinic, or hospital, who has treated me, to supply complete transcript of my medical records to the medical department of Campbell Soup Company.

Applicant's Signature Beulah Rhodes

(OVER)

Print your age and name at top of other side

926 REV. 11 54

PRE-PLACEMENT PHYSICAL EXAMINATION RECORD

Compass Coal Company

USE ONLY

Age 37 | NAME: Rhodes (Last) Brenda (First) Mae (Middle)

Date of Examination 12/5/16 | Plant or Division Sumter

Reason for Present Examination: Pre-Placement [ ] Occupational [ ] Other(specify) | Re-Entrance [ ] Periodic

Occupation – Type of Work Work Train

Builds: [ ] Slender [ ] Medium [X] Obese

Frame: [ ] Small [X] Medium [ ] Large

Temperature 98.6°

Height: Feet 5 Inches 4 1/2

Weight 232

Pulse – A-Before Exercise 88 B-After Exercise 84

Hearing – R – 15/15 L – 15/15

Blood Pressure 160/82

	Acuity	Uncorrected			Corrected			Color Vision
Peripheral Vision O	For	Right Eye 20/ 60	Left Eye 20/ 20	Both Eyes 20/ 20	Right Eye 20/	Left Eye 20/	Both Eyes 20/	O
Muscular Tension X	Near	Right Eye 20/ 60	Left Eye 20/ 20	Both Eyes 20/ 20	Right Eye 20/	Left Eye 20/	Both Eyes 20/	Depth Perception O

CLINICAL EVALUATION: (Use Code) "O" – Within Normal Limits "1" – Significantly Abnormal "X" – Not Examined

	Code		Code		Code		Code
Deformities	—	26 Mouth	O	51 Groin	—	76 Joints – Hips	O
Posture	O	27 Teeth	1	52 Hernia	—	77 Knees	O
Skin	O tat	28 Gums	O	53 Truss	—	78 Ankles	O
Complexion	L	29 Tongue	O	54 Glands	O	79 Toes	O
Rash		30 Throat	O	55 Genitalia	X	80	
Scars	tattoo - upper	31 Tonsils	O	56 Scars, Sores, Discharges	—	81 Spine – Curvature	O
		32 Oral Hygiene	O	57 Varicocele	—	82 Mobility	O
Musculature	—	33 Neck	O	58 Hydrocele	—	83 Deformity	—
Atrophies	—	34 Thyroid	O	59 Testicles	—	84 Tenderness	—
0 Scalp	O	35 Glands	O	60 Legs	I	85	
1 Eyes	Rt amaurosis O	36 Thorax	O	61 Varicosities	I	86 Gait	O
2 Conjunctive	O	37 Breasts	O	62 Pigmentation	—	87	
3 Cornea	O	38 Ribs	O	63 Edema	+ +	88 Reflexes	O
4 Pupils "L" & "R"	O	39 Lungs	O	64		89 Romberg	Neg
5 Ophthalmoscopic	O	40 Heart	O	65 Buttocks	SI	90 Knee	+ +
6 Eye Glasses	—	41		66 Rectum	X	91 Achillas	+
7		42		67		92 Babinski	Neg
8 Nose	O	43		68 Pilonidal	X	93 Superficial	+
9 Ears	O	44 Expansion (inches)	1"	69 Joints – Neck	O	94 Sensory Tests	X
0 Paternal	O	45 Abdomen		70 Shoulders	O	95	
1 Otoscopic	Rt Drum Scar	Size (inches)		71 Elbows	O	96 Lymphatics	O
2 Hearing Aid	—	47 Tenderness	—	72 Wrists	O	97	
3 Hearing	O	48 Tumors, Masses	—	73 Fingers	O	98 Mental	O
4		49 Umbilicus	O	74		99 Emotional	O
5		50		75			

	Yes	No
Does the Examinee have physical, nervous or emotional disability which warrants special work restrictions?		V
Does he have a condition for which Remediable Therapy is indicated?		V
Did you refer him to a Doctor or rehabilitation agency?		V

URINALYSIS: Reaction | Specific Gravity | Albumin | Sugar | Microscopic

C.B.C.	W.R.	Serology:
Chest X-Ray:	Buck X-Ray	E.K.G.:

Physical Rating A,B,C,D (If "C", Circle No. 1,2,3,4,5 or 6)

A – Qualified for any work

B – Qualified for any work suitable for individuals of small stature (including women)

C – Qualified for restricted work (Indicate restrictions 1 to 6)

D – Not qualified for any available work _____

1 – Minimal Lifting
2 – Minimal Bending
3 – No Climbing
4 – No long periods of standing
5 – No Exposure to _____
6 – Special restrictions _____

Examining Physician: Please add your summary and diagnoses below. Explain any abnormal history; make notes of the dates, and the presence or absence of sequelae. You should comment on each item checked "YES" on the other side of this sheet. Include your recommendations to the examinee. Please use a blank sheet if you need more space.

Hypertensive Heart Disease
Hx. C-section
Varicose veins
Pitting edema lower legs
Occipital Neuralgia
Left sm. drum scar
Anemia Hx

Physical Profile Serial	D	Re-examine in 24 months	Physician's Signature and Date: Robert E. Mahaffey MD 12/5/16

I have been informed regarding the Medical Examination findings herein. Applicant's Signature and Date: Brenda Mae Rhodes

January 16, 1967

Mrs. Beulah Rhodes
609 South Harvin
Sumter, South Carolina

Dear Mrs. Rhodes:

I have been asked to supply you with a list of disqualifying defects of your physical examination of December 5, 1966.

As listed on our medical records, we found the following conditions to be present:

A. Exogenous obesity—your weight being 233 pounds. The acceptable weight for your age and height being 132 pounds, makes your weight 43% above average.

B. Also present were varicose veins in both lower extremities, causing swelling and edema of both legs.

C. Artificial right eye was present which limits you to vision in only one eye. Conditions present in the existing eye were abnormal hyperphoria and abnormal far point fusion on both far and near vision.

D. Also found were scarring of the left ear drum and carious teeth.

Because of the above physical abnormalities, I cannot recommend that you are physically qualified to perform the work required at Campbell Soup Company.

Yours truly,

R. E. McDowell, M.D.
Plant Physician

REMcD/bh

RECEIVED
SEP 29 1967
DIRECTOR OF
COMPLIANCE

Form approved
Bureau of the Budget
No. 124-R001

8132

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

WASHINGTON, D. C. 20506

NY6-10-789

CHARGE OF DISCRIMINATION

FILL OUT THIS FORM: (Please print or type)

YOUR NAME _____ _____
telephone number

ADDRESS _____
Number and Street

_____
City State Zip code

1. Were you discriminated against in connection with employment because of:

__X__ Race or Color _____Religion ___Sex

_____ National Origin

2. Who discriminated against you? Give the name and address of the employer, labor organization, employment agency, or apprenticeship committee.

NAME _____

ADDRESS _____

_____

3. When did this discrimination take place? _____
day month year

4. Please tell your story of discrimination. Explain what unfair thing was done to you.

See attached letter

(use more sheets if needed)

(The law requires that your charge be made under oath. You may take this paper for notarization to a notary public or other official who is authorized to administer oaths. If this is impractical, send this paper to the Commission without having it notarized. The Commission will arrange to have the oath administered to you.)

I SWEAR OR AFFIRM THAT I HAVE READ THE ABOVE AND THAT IT IS TRUE TO THE BEST OF MY KNOWLEDGE.

DATE: 7-22-66 Mc Berdell Shelton
(Sign here)

Subscribed and sworn to before me

this 22 day of July, 1966. J. Philip Rembert
(Name) (Title)

You need not be able to answer the questions below, but if you do know the answers, it will help the Commission to handle your complaint more quickly.

1. Have you filed a complaint about this discrimination with a State or local government agency? _____YES _____NO

If you checked yes, please give the following information:

NAME OF AGENCY _____

ADDRESS _____

DATE YOU FILED COMPLAINT _____

2. If your charge is against a company or a union, does it have more than one hundred (100) employees or members?

_____ YES _____ NO _____ DO NOT KNOW

Mail to: Franklin D. Roosevelt, Jr., Chairman
Equal Employment Opportunity Commission
Washington, D. C. 20006

RECEIVED IN
EXECUTIVE DIRECTORS OFFICE
SEP 29 1966

NYC-10-784

Equal Employment Opportunity Commission
Washington, D.C. 20506

Dear Sir:

I am writing this letter because at Campbell Soup Company, I have an application out there since the month of May. After I had not heard anything from it I went to the plant in July and ask to speak to the personnel manager. The lady at the desk told me he could not tell me anymore than she could. I told her I still would rather talk with him. She then told me to have a seat. When Mr. Parton called me in he asked me what did I want? I told him I wanted to work anywhere in the plant that I could. I told him how long I had an application in and I know of others that were working there that had put in applications since I had. He told me that he didn't hire on first come first serve basis. He said we pick our applicants and anybody else that want four or five ladies I give them my files, and they pick who they want. You can come back anytime to talk to me he said, and stood up. I told him I would be back because Rev. Lewis told me you said anybody that had an application out there a long time should come and talk with you. Then he said, Beulah you will get a hearing from me around the 15th of July or no longer than the first of August. I didn't got any hearing so I went back the last week in August, and ask to speak to Mr. Parton.

When Mr. Parton came out and I told him what I wanted and told him what he said the last time we met, he said he did not tell me that because he don't tell anybody no such thing. He said I had misunderstood him. He told me he could not hire anyone at all, if he could he would go out and hire 700 head of people & jobs and be through. When I ask to see the man that did the hiring, he told me he was out of town. He also told me I would have to complete the 6th grade. Then I told him of people that I know that work there that cannot read and he ignored me.

I hope to hear from you verysoon because I want to work.

RECEIVED
SEP 29 1966
DIRECTOR OF COMPLIANCE

Yours Truly,

Mrs Beulah Rhodes

Mrs. Beulah Rhodes

cc: U.S. Civil Rights Commission, Washington, D.C.
Campbell Soup Company, Camden, New Jersey

CHARGE OF DISCRIMINATION

(Under Title VII of the Civil Rights Act of 1964)

This form is to be used only to file a charge of discrimination based on RACE, COLOR, RELIGION, SEX, or NATIONAL ORIGIN.

MAIL TO: Equal Employment Opportunity Commission
1800 G Street, N. W.
Washington, D. C. 20506

Case File No. AT6-12-975

(please print or type)

1 YOUR NAME: Mrs. Beulah Rhodes — PHONE NUMBER: 773-7187

STREET ADDRESS: 609 S. Harvin St

CITY: Sumter, — STATE: S.C. — ZIP CODE: 29150

2 WAS THE DISCRIMINATION BECAUSE OF: (please check one)

[x] Race or Color [ ] Religious creed [ ] National origin [ ] Sex (specify)

3 Who discriminated against you? Give the name and address of the employer, labor organization, employment agency and/or apprenticeship committee. If more than one, list all.

NAME: Campbell Soup Company

STREET ADDRESS: Sumter, South Carolina

CITY: _____ STATE: _____ ZIP CODE: 29150

AND (other parties if any) _____

4 Have you filed this charge with a state or local government agency? [ ] Yes [x] No

5 If your charge is against a company or a union, how many employees or members? Number [ ] Do Not Know

6 The most recent date on which this discrimination took place: Month Dec. Day 5 Year 1966

7 Explain what unfair thing was done to you:

I made application for a job at Campbell Soup plant in October 1965, and took a test at the Employment Office May 1966, and was told that I past the test. On December 3, 1966 I took another test at the local Campbell Soup Company Plant, and was told that I past the the test. On December 5, 1966 I took a physical, but was told that I did not past the physical. After I past the written test, I was asked many questions about my activities here in the Community. I was asked if I went to Washington, D.C. in September 1966 to complain to the

(use other side of this page if necessary)

8 I SWEAR OR AFFIRM THAT I HAVE READ THE ABOVE CHARGE AND THAT IT IS TRUE TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

Date: Dec 16, 1966 — Mrs Beulah R Rhodes (SIGN HERE)

Subscribed and sworn to before me this 16 day of December 1966

J. Phillip Rembert (NAME) _____ (TITLE)

Federal Government about the hiring practices of the Campbell Soup Company. I told him (Mr. Partin) that I went to Washington with the group. He also asked me if I thought that the trip would do any good, I told him that I hope that it would. He then asked me how the Colored people felt in the Community. I told him that I did not know, and that I could only speak for myself.

The doctor told me that something was wrong with my ears, mouth, and my legs. I asked him to write the ailments down so that I could get treatment for them, but he refused. He told me to go to my doctor and let him find the ailments. Dr. McDowell, the plant doctor then told me that no doctor will ever be able to treat me enough so that I could get a job at Campbell Soup Company.

I went to another doctor on Dec. 6, 1966 here in Sumter for reexamination. The report from the doctor will be in on Friday Dec. 9, 1966.

I believe that I was refused a job at the local Campbell Soup Company because of my race and my activities in the Community, and especially because of the trip to Washington, D.C. to protest to the Federal Government about the hiring practices at the local Campbell Soup Company Plant.

Yours truly

Beulah Rhodes

Mrs. Beulah Rhodes

609 S. Harvin St

Sumter, South Carolina

[1968, March 5]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

IDELL D. KINGWOOD, et al., Plaintiffs, v. CAMPBELL SOUP COMPANY, INC. A New Jersey Corporation, et al., Defendants.	CIVIL ACTION NO. 67-167 REQUEST FOR ADMISSIONS

Campbell Soup Company (Sumter Plant) Inc., hereinafter called this Defendant, requests Silas Walker, Jr., hereinafter called this Plaintiff, within 10 days after service of this request, to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

1. That each of the following documents, which are exhibited with this request and will again be produced for inspection upon reasonable request at the office of this Defendant's attorneys on any day within 10 days after the service of this request, is genuine:

a. Application for Employment dated 9-12-66 and signed Silas Walker, Jr., a copy of which is annexed hereto. This document is the application for employment filed by this Plaintiff with this Defendant on September 12, 1966.

b. Petition to Chairman, Equal Employment Opportunity Commission, dated October 4, 1966, signed by Silas Walker, Jr., among others. This is a document which was signed by this Plaintiff, and other persons during a meeting held in Sumter, South Carolina, on October 4, 1966.

2. That each of the following statements is true:

a. The said Application for Employment, exhibited with this request, was filed by this Plaintiff with this Defendant on September 12, 1966, and is the only written application for employment filed by this Plaintiff with either of the Defendants.

b. The said Petition, exhibited with this request, was filed by or on behalf of this Plaintiff with the Equal Employment Opportunity Commission in Washington, D. C., sometime in October, 1966.

c. The said Petition, exhibited with this request, was not sworn to by this Plaintiff.

d. With the exception of the said Petition, exhibited with this request, this Plaintiff did not file any type of unfair employment practice charge with the Equal Employment Opportunity Commission or any of its representatives against either of the Defendants at any time prior to the institution of this proceeding.

e. This Plaintiff has never been denied permission by either of the Defendants or any of their representatives to file an application for employment.

f. A manual dexterity test has never been administered to this Plaintiff by either of the Defendants or any of their representatives, or by the South Carolina Employment Security Commission or any of its representatives.

g. This Plaintiff has never requested permission from either of the Defendants or their representatives, or from the South Carolina Employment Security Commission or any of its representatives, to take a manual dexterity test.

h. Beatrice C. Walker is the wife of this Plaintiff and has been employed by this Defendant at its plant in Sumter, South Carolina, since on or about January 11, 1967.

Robert T. Thompson

Homer L. Deakins, Jr.

Attorneys for Campbell Soup Company (Sumter Plant) Inc.

The Daniel Building
Greenville, S. C. 29602

Office Ck # 28 for date
L Bey

APPLICATION FOR EMPLOYMENT

CAMPBELL SOUP COMPANY — (SUMTER PLANT) INC.

AN EQUAL OPPORTUNITY EMPLOYER

LIST NOTHING WHICH WOULD INDICATE NATIONAL ORIGIN, RACE, CREED OR COLOR

PERSONAL

Date 9-12-66 Social Security Number 251-14-9207

Name WALKER Jr SILAS
(Please Print Name) (Last) (First) (Middle)

Address CABLE SC Telephone 469-3565
(Street & Number) (City) (Zone) State

Male X Female ____ Age 47 Date of Birth 1918 (Month, Day, Year) Are you a Citizen? Yes yes No ____

Marital Status: Single ____ Divorced ____ Married X Widow(er) ____ No. of Children 6

Height 5-9 Weight 165 Is anyone dependent upon you for support? yes Who? ____

What relatives do you have in our employ? Ezra Copeland
(Name and Relationship)

Have you ever been employed by this Company? No If Yes, From ____ To ____
(Yes or No)

In case of emergency notify Beatrice Walker Address Cable Telephone 469-3575

List any Physical Defects or Serious Illnesses No

Shift Preferred 3 Rot Date Available Now

Position Desired Maintenance Pay Expected Top Pay How were you recommended to us?

EXPERIENCE

PREVIOUS EMPLOYMENT

(List Most Recent Job First)

COMPANY	TYPE OF WORK PERFORMED	DATE EMPLOYED	REASON FOR LEAVING	SALARY
(Name) (Address) (City & State)		From ____ To ____		
(Name) (Address) (City & State)		From ____ To ____		
(Name) (Address) (City & State)		From ____ To ____		

EDUCATION

EDUCATION	NAME OF SCHOOL AND LOCATION	DATES ATTENDED	GRADE AVERAGE	HIGHEST GRADE COMPLETED
Grade School	Nelson Newberton	1938	80	9th
High School				
College or University				
Correspondence or Other				

Have you ever been arrested? No , list dates and places: _____

Are you now or have you ever been a member of the Communist Party? No No Yes _____

Are you now or have you ever been a member of any party or associated with any group which advocates the overthrow of the government of the United States? No

Are you now or have you ever been a member of or associated with any organization which has been declared to be subversive by the Attorney General of the United States? Yes _____ No X.

If the answer to any of the above is Yes, please explain fully: _____

Have you ever received Workmen's Compensation for a disability incurred in previous employment? X

If yes, please explain: _____

Military Service: Branch _____ Date Inducted _____ Date of Discharge _____

Grade or Rank _____ Military Job _____

Give three character references. Do not include relatives and former employers.

Name Carolyn Fowler Address Lucedale Ms

Name R M Dedeaux Address Gautier Ms

Name Hyacinth Sphinxes Address Gautier Ms Box 58

I agree to submit a birth certificate or other evidence to substantiate my age. I have rechecked this application for errors and understand that the furnishing of misinformation or the withholding of information may subject me to immediate dismissal.

Witness _____ Signature X Silas Watts Jr

DO NOT WRITE BELOW THIS LINE

Medical Exam: Passed _____ Rejected _____ Restrictions: _____ Date _____ Dr's. Initials: _____

DATE	DEPARTMENT	POSITION	RATE	REMARKS

PETITION:

To: Chairman, Equal Employment Opportunity Commission

We, and each of us, the undersigned have found on many occasions that the SWANSON FROZEN FOOD DIVISION, of the Campbell Soup Company Located at Sumter, South Carolina practices discrimination Toward Negroes and Toward me the undersigned in the screening and placement on JOBS NOW Available and WERE AVAILABLE SINCE the Company Came To Sumter. Because this Company used and USES the SOUTH CAROLINA Employment SECURITY COMMISSION To receive our applications, we are subjected to discrimination because that Commission has been found To act with discrimination towards Negroes - delayed referrals or no referrals. We, and each of us, want this Company's Division Investigated and some effort made To get us some of the Jobs there.

Dated: October 4, 1966.

Signed:

	NAME	Address:
AFC-10-747	1. Lillie Mae Pitts	413 Priewood Road
748	2. Alice Lockhart	44 & St. Sumter
749	3. Annie Mae Scings	135 Mitchell St
750	4. Mary Lee Lucas	R 1 Box 101 Alcolu S.C.

Affix one of three Pages

		Name	Address:
AT 6-10-751	1.	Mrs Virginia Burgess	Rt 5, Box 338-B Sumter, S.C.
752	2.	Mrs Wilkes C Davis	526 Dr. Sumter St
753	3.	Mrs. Ruth D. Knight	% Jackson ave
754	4.	Mrs Ida mae Jones	Route 2 Box 51C
755	5.	Mrs Phoebe Davis	211 Balfalcon ave
756	6.	Miss Gladys Romeo	P.O. Box 163 Pinewood, S.C
757	7.	Mrs. Delois Baisford	Post office Pinewood S.C.
758	8.	Mrs Cathrine Braxton	Rt 2 Box 181
759	9.	Mary Blondin	Routh 1 Box 94
760	10.	Mrs. Margaret Elizabeth Wright	Rt. 5 Box 86-A Sumter,
761	11.	Mrs Hattie mae McCoy	Rte 1, Box 238-A Sumter
762	12.	Mrs Hattie Mae Baxter	Rte 2 Box 181 Manning
763	13.	Mrs Mary E. Hicks	Rte 2 box 177 Manning S.C.
764	14.	Mrs Mary McCants	Rte 1 Box 90-B Olanta S.C.
765	15.	Mrs Evelyn Dawsey	Olanta S.C. Route 1 Box 96-
766	16.	Nora M. Perry	Pinewood S.C.,
767	17.	Ethel mae Bryant	RD. 1 Box 55 Olanta S.C.
768	18.	Carrie Mae Dawsey	Olanta S.C. R3, 86191
769	19.	Lucie Brown	Pinewood S.C.
770	20.	Mrs Meta Brunson	R.2 Box 211-A Pinewood S.C.
771	22.	Mr Silas walker Jr	R 1 Box 110 Galivants
772	23.	Jannie Q Pinkham	202 Broad St.
773	24.	Musgie Lee Michel	

Dated: October 4, 1966

I, Dorothy V. Sampson do certify that I personally saw each of the subscribers sign his or her name to this petition on the date above noted.

Dorothy V. Sampson
29 Martin Town Street
Sumter, S. Carolina.

[1968, March 5]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

IDELL D. KINGWOOD, et al., Plaintiffs, v. CAMPBELL SOUP COMPANY, INC., A New Jersey Corporation, et al., Defendants.	CIVIL ACTION NO. 67-167 REQUEST FOR ADMISSIONS

Campbell Soup Company (Sumter Plant) Inc., hereinafter called this Defendant, requests Margaret Elizabeth Wright, hereinafter called this Plaintiff, within 10 days after service of this request, to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

1. That each of the following documents, which are exhibited with this request and will again be produced for inspection upon reasonable request at the office of this Defendant's attorneys on any day within 10 days after the service of this request, is genuine:

a. Application for Employment dated May 18, 1966 and signed Margaret Elizabeth Wright, a copy of which is annexed hereto. This document is the application for employment filed by this Plaintiff with this Defendant on May 18, 1966.

b. Petition to Chairman, Equal Employment Opportunity Commission, dated October 4, 1966, signed by Margaret Elizabeth Wright, among others. This is a document which was signed by this Plaintiff, and other persons, during a meeting held in Sumter, South Carolina, on October 4, 1966.

2. That each of the following statements is true:

a. The said Application for Employment, exhibited with this request, was filed by this Plaintiff with this Defendant on May 18, 1966, and is the only written application for employment filed by this Plaintiff with either of the Defendants.

b. The said Petition, exhibited with this request, was filed by or on behalf of this Plaintiff with the Equal Employment Opportunity Commission in Washington, D. C., sometime in October, 1966.

c. The said Petition, exhibited with this request, was not sworn to by this Plaintiff.

d. With the exception of the said Petition, exhibited with this request, this Plaintiff did not file any type of unfair employment practice charge with the Equal Employment Opportunity Commission or any of its representatives against either of the Defendants at any time prior to the institution of this proceeding.

e. This Plaintiff has never been denied permission by either of the Defendants or any of their representatives to file an application for employment.

f. This Plaintiff has never completed the eighth grade in any school.

g. A manual dexterity test has never been administered to this Plaintiff by either of the Defendants or any of their representatives or by the South Carolina Employment Security Commission or any of its representatives.

h. This Plaintiff has never requested permission from either of the Defendants or their representatives, or from the South Carolina Employment Security Commission or its representatives, to take a mantual dexterity test.

The Daniel Building
Greenville, S. C. 29602

Robert T. Thompson

Attorneys for Campbell Soup Company

Defts. Ex 17 26 for Identification
L.B.H.

APPLICATION FOR EMPLOYMENT

CAMPBELL SOUP COMPANY — (SUMTER PLANT) INC.

AN EQUAL OPPORTUNITY EMPLOYER

LIST NOTHING WHICH WOULD INDICATE NATIONAL ORIGIN, RACE, CREED OR COLOR

Date MAY 18 1966 Social Security Number 249-81-0494

Name Wright Margaret Elizabeth
(Please Print Name) (Last) (First) (Middle)

Address R.F.D. 5 Box 86-A Sumter S. C. Telephone
(Street & Number) (City) (Zone) State

PERSONAL

Male ____ Female ____ Age 35 Date of Birth Oct. 22, 1930 Are you a Citizen? Yes ____ No ____
(Month, Day, Year)

Marital Status: Single ____ Divorced ____ Married X Widow(er) ____ No. of Children 5 (6 - 11 mos.)

Height 5 ft. Weight 130 Is anyone dependent upon you for support? ____ Who? 2 of the Children

What relatives do you have in our employ? ____
(Name and Relationship)

Have you ever been employed by this Company? ____ If Yes, From ____ To ____
(Yes or No)

In case of emergency notify James Wright Address Same Telephone ____

List any Physical Defects or Serious Illnesses ____

Shift Preferred Any Date Available Now

Position Desired Any Pay Expected ____ How were you recommended to us?

PREVIOUS EMPLOYMENT

(List Most Recent Job First)

EXPERIENCE

COMPANY	TYPE OF WORK PERFORMED	DATE EMPLOYED	REASON FOR LEAVING	SALARY
None (Name) (Address) (City & State)		From ____ To ____		
(Name) (Address) (City & State)		From ____ To ____		
(Name) (Address) (City & State)		From ____ To ____		

EDUCATION

EDUCATION	NAME OF SCHOOL AND LOCATION	DATES ATTENDED	GRADE AVERAGE	HIGHEST GRADE COMPLETED
Grade School				7th Grade
High School				
College or University				
Correspondence or Other				

Have you ever been arrested? No If yes, list dates and places: _____

Are you now or have you ever been a member of the Communist Party? No_____ Yes_____

Are you now or have you ever been a member of any party or associated with any group which advocates the overthrow of the government of the United States? No

Are you now or have you ever been a member of or associated with any organization which has been declared to be subversive by the Attorney General of the United States? Yes_____ No No.

If the answer to any of the above is Yes, please explain fully: _____

Have you ever received Workmen's Compensation for any disability incurred in previous employment?_____

If yes, please explain: _____

Military Service: Branch _____ Date Inducted_____ Date of Discharge_____

Grade or Rank_____ Military Job_____ Type of Discharge _____

Give three character references. Do not include relatives and former employers.

Name_____ Address_____

Name_____ Address_____

Name_____ Address_____

I agree to submit a birth certificate or other evidence to substantiate my age. I have rechecked this application for errors and understand that the furnishing of misinformation or the withholding of information may subject me to immediate dismissal.

Witness_____ Signature Margaret Elizabeth Wright

DO NOT WRITE BELOW THIS LINE

Medical Exam: Passed_____ Rejected_____ Restrictions:_____ Date_____ Dr's. Initials:_____

DATE	DEPARTMENT	POSITION	RATE	REMARKS

PETITION:

To: Chairman, Equal Employment Opportunity Commission

We, and each of us, the undersigned have found on many occasions that the SWANSON FROZEN FOOD DIVISION, of the CAmpbell SOUP COMPANY Located at Sumter, South Carolina practices discrimination Toward Negroes and Toward me the undersigned in the screening and placement on JOBS NOW Available. and WERE AVAILABLE SINCE the Company CAme To Sumter. Because this Company used and USES the SOUTH CAROLINA Employment SECURITY COMMISSION To receive our applications, we are subjected to discrimination because that Commission has been found To act with discrimination towards Negroes - delayed referrals or no referrals. We, and each of us, want this Company's Division INvestigated and some effort made To get us some of the Jobs there.

Dated: October 4, 1966.

Signed:

	MAINE	Address:
AF6-10-747	1. Lyllie Mae Pitts	413 Priemood Road
748	2. Alice Jackson	44 & St. Sumter
749	3. Annie Mae Billings	135 Mitchell St
750	4. Mary Lee Lucas	R11 Box 101 Alcolu, S.C.

Page one of three Pages

Page 2 of 3 pages

		Name	Address:
AT 6-10-751		Mrs Virginia Burgess	R.F.D. 3, Box 378-B Sumter, S.C.
	752	2. Mrs Wilkes C Davis	526 So. Sumter St
	753	3. Mrs. Ruth D. Knight	19 Singleton ave
	754	4. Mrs Ida mae Jones	Route 2 Box 51C
	755	5. Mrs Phoebe Davis	211 Bultman ave
	756	6. Miss Gladys Romeo	P.O. Box 163 Pinewood, S.C.
	757	7. Mrs. Delois Baisden	Box 163 Pinewood S.C.
	758	8. Mrs Catherine Preston	Rt 2 Box 181
	759	9. Mary Blanding	Route 1 Box 94
	760	10. Mrs. Madgard Elizabeth Knight	Rt. 5 Box 86-A Sumter,
	761	11. Mrs Hattie mae McCoy	Rte 1, Box 238-A Sumter
	762	12. Miss Idabelle L. Preston	Rte 2 Box 18 Manning
	763	13. Mrs Mary E Hicks	Rte 2 box 177 Manning S.C.
	764	14. Mrs Mary McCants	Rte 1 Box 90-B Alcolu S.C.
	765	15. Mrs Evelyn Dawsey	Alcolu S C Route 1 Box 96-
	766	16. Nora M. Perry	Pinewood S.C.
	767	17. Ethel mae Burgess	R.D. 1 Box 55 Alcolu S.C.
	768	18. Carrie Mae Dawsey	Alcolu S C Box 86 A
	769	19. Lucie Bracey	Pinewood S.C.
	770	20. Mrs Neta Brunson	R. 2 Box 211-A Pinewood S.C.
	771	21. Mr Silas Walker Jr	R 1 Box 110 Galivants
	772	22.	
	773	23. Jennie Y Graham	202 Broad St.
		24. Hassie Lee Mickel	

Dated: October 4, 1966

I, Dorothy V. Sampson do certify That I personally saw each of the subscribers sign his or her name to this petition on the date above noted.

Dorothy V. Sampson
39 Washington Street
Sumter, South Carolina.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

IDELL D. KINGWOOD, et al., Plaintiffs, v. CAMPBELL SOUP COMPANY, INC., A New Jersey Corporation, et al., Defendants.	CIVIL ACTION NO. 67-167 REQUEST FOR ADMISSIONS

Campbell Soup Company (Sumter Plant) Inc., hereinafter called this Defendant, requests Maebell Williams, hereinafter called this Plaintiff, within 10 days after service of this request, to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial:

1. That each of the following documents, which are exhibited with this request and will again be produced for inspection upon reasonable request at the office of this Defendant's attorneys on any day within 10 days after the service of this request, is genuine:

a. Application for Employment dated January 11, 1966 and signed Maebell Williams, a copy of which is annexed hereto. This document is the application for employment filed by this Plaintiff with this Defendant on January 11, 1966.

b. Application for Employment dated April 5, 1966 and signed Maebell Williams, a copy of which is annexed hereto. This document is the application for employment filed by this Plaintiff with this Defendant on April 5, 1966.

c. Wonderlic Personnel Test, Form I, dated August 25, 1966, and signed Maebell Williams, a copy of which is annexed hereto. This document is the Wonderlic Personnel Test which was administered to this Plaintiff by a representative of this Defendant on September 19, 1966.

d. Charge of Discrimination dated 10-5-66, and signed by Maebell Williams, a copy of which is annexed hereto. This document is the Charge of Discrimination filed by this Plaintiff against this Defendant with the Equal Employment Opportunity Commission on or about October 5, 1966.

2. That each of the following statements is true:

a. That the two said Applications for Employment, exhibited with this request, were filed by this Plaintiff with this Defendant on January 11 and April 5, 1966, respectively, and are the only written applications for employment filed by this Plaintiff with either of the Defendants.

b. The said Wonderlic Personnel Test, exhibited with this request, was administered to this Plaintiff by a representative of this Defendant on August 25, 1966.

c. The said Charge of Discrimination, exhibited with this request, was filed by or on behalf of this Plaintiff on or about October 5, 1966, with the Equal Employment Opportunity Commission.

d. With the exception of the document mentioned in paragraph 2 c above, this Plaintiff did not at any time prior to the institution of this proceeding file any other written document with the Equal Employment Opportunity Commission or any of its representatives alleging that either of the Defendants had discriminated in any manner against her or any other persons.

e. This Plaintiff has never been denied permission by either of the Defendants or any of their representatives to file an application for employment.

Robert T. Thompson

Robert T. Thompson

The Daniel Building
Greenville, S. C. 29602

Homer L. Deakins, Jr.

Attorneys for Campbell Soup Company
(Sumter Plant) Inc.

Dept 54 37 for Identif
FBI

APPLICATION FOR EMPLOYMENT

CAMPBELL SOUP COMPANY — (SUMTER PLANT) INC.

AN EQUAL OPPORTUNITY EMPLOYER

LIST NOTHING WHICH WOULD INDICATE NATIONAL ORIGIN, RACE, CREED OR COLOR

PERSONAL

Date Jan. 11, 1966 Social Security Number 250-40-6037

Name ~~Mae Bell Williams~~ Williams (Please Print Name) (Last) Mae (First) Bell (Middle)

Address BOX 835 (Street & Number) Webb St. (City) Sumter (Zone) S.C. (State) Telephone 773-3081

Male ____ Female ✓ Age 37 Date of Birth 9-27-1929 (Month, Day, Year) Are you a Citizen? Yes Yes No ____

Marital Status: Single ____ Divorced ____ Married Yes Widow(er) ____ No. of Children 10

Height 5'1½" Weight 132lbs Is anyone dependent upon you for support? 3 Who? My children

What relatives do you have in our employ? None (Name and Relationship)

Have you ever been employed by this Company? No (Yes or No) If Yes, From ____ To ____

In case of emergency notify Mahalia Williams Address 835 Webb St. Telephone 773-3081

List any Physical Defects or Serious Illnesses None

Shift Preferred Any Date Available Any

Position Desired Must be near home Pay Expected Minimum & Assured How were you recommended to us?

Radio

PREVIOUS EMPLOYMENT

(List Most Recent Job First)

EXPERIENCE

COMPANY (Name) / (Address) / (City & State)	TYPE OF WORK PERFORMED	DATE EMPLOYED	REASON FOR LEAVING	SALARY
Paul's Hamburger Tuscaloosa Ala	Cooking	From 1949 To 1952	Wanted to learn	$28 per wk.
Cunningham Factory Lumber Co. South Carolina	Carpenter Helper	From 1957 To 1960	Job ended	$15 per week
Kalikan Syrup Co. Bond St. Sumter S.C.	Chemical Mill	From 2-65 To 4-1965	Laid off to take on the small railway	18 per wk.

EDUCATION

EDUCATION	NAME OF SCHOOL AND LOCATION	DATES ATTENDED	GRADE AVERAGE	HIGHEST GRADE COMPLETED
Grade School 9th	Mayesville	1945	4's & 5's	9th
High School	Instituted			9th
College or University				
Correspondence or Other				

Have you ever been arrested? No If yes, list dates and places: None

Are you now or have you ever been a member of the Communist Party? No No Yes

Are you now or have you ever been a member of any party or associated with any group which advocates the overthrow of the government of the United States? None

Are you now or have you ever been a member of or associated with any organization which has been declared to be subversive by the Attorney General of the United States? Yes No None.

If the answer to any of the above is Yes, please explain fully: None

Have you ever received Workmen's Compensation for any disability incurred in previous employment? None

If yes, please explain:

Military Service: Branch None Date Inducted None Date of Discharge None

Grade or Rank None Military Job None Type of Discharge None

Give three character references. Do not include relatives and former employers.

Name Mrs. H Tibbet Address 252 Webb St, Sumter

Name Mr. James Britton Address Cotrangus Street, Sumter S.C

Name Mr. H.F. Power Address Dr. Manning Ave.

I agree to submit a birth certificate or other evidence to substantiate my age. I have rechecked this application for errors and understand that the furnishing of misinformation or the withholding of information may subject me to immediate dismissal.

Witness Mrs. Barbara Tibbet Signature Mrs Mabel Williams

DO NOT WRITE BELOW THIS LINE

Medical Exam: Passed Rejected Restrictions: Date Dr's. Initials:

DATE	DEPARTMENT	POSITION	RATE	REMARKS

Defts Ex # 38 for Identification

APPLICATION FOR EMPLOYMENT

CAMPBELL SOUP COMPANY — (SUMTER PLANT) INC.

AN EQUAL OPPORTUNITY EMPLOYER

LIST NOTHING WHICH WOULD INDICATE NATIONAL ORIGIN, RACE, CREED OR COLOR

Date April 5, 1966 Social Security Number 250-40-6037

Name Williams (Please Print Name) (Last) Mae (First) Bell (Middle)

Address 835 Webb St (Street & Number) Sumter (City) S.C. (Zone) State Telephone 3-8130

PERSONAL

Male ____ Female ✓ Age 38 Date of Birth 9-29-1927 (Month, Day, Year) Are you a Citizen? Yes ✓ No ____

Marital Status: Single ____ Divorced ____ Married ✓ Widow(er) ____ No. of Children 10 (19-32)

Height 5'4" Weight 125 Is anyone dependent upon you for support? yes Who? 3 children

What relatives do you have in our employ? None (Name and Relationship)

Have you ever been employed by this Company? No (Yes or No) If Yes, From Construction To ____

In case of emergency notify Mabel S Williams Address 835 Webb St Telephone 3-8130

List any Physical Defects or Serious Illnesses None

Shift Preferred Any Date Available Any time

Position Desired Factory Worker Pay Expected Average How were you recommended to us?

PREVIOUS EMPLOYMENT

(List Most Recent Job First)

EXPERIENCE

COMPANY	TYPE OF WORK PERFORMED	DATE EMPLOYED	REASON FOR LEAVING	SALARY
Scott Canning Co. (Name) Mecaslin Rd. (Address) Sumter S.C. (City & State)	Canning tomato Sup.	From ____ To ____ Summer Months	Factory Closed 1956-1962	$4.50 per day.
Thos. Sumter Packing (Name) Sumter (Address) S.C. (City & State)	Grading tomatoes	From ____ To ____ Summer Mos.	1948-1954 Factory closed for Summer	$28 per week.
Williams Tea Co. (Name) Sumter (Address) S.C. (City & State)	Clerk	From 2-1962 To 5-1963 3 months	Laid off	$30 per week

EDUCATION

EDUCATION	NAME OF SCHOOL AND LOCATION	DATES ATTENDED	GRADE AVERAGE	HIGHEST GRADE COMPLETED
Grade School	[illegible]	[illegible]	[illegible]	[illegible]
High School	[illegible]		[illegible]	
College or University				
Correspondence or Other				

Have you ever been arrested? No If yes, list dates and places: None

Are you now or have you ever been a member of the Communist Party? No No Yes

Are you now or have you ever been a member of any party or associated with any group which advocates the overthrow of the government of the United States? None

Are you now or have you ever been a member of or associated with any organization which has been declared to be subversive by the Attorney General of the United States? Yes No None

If the answer to any of the above is Yes, please explain fully: None

Have you ever received Workmen's Compensation for any disability incurred in previous employment? None

If yes, please explain: None

Military Service: Branch None Date Inducted None Date of Discharge None

Grade or Rank None Military Job None Type of Discharge None

Give three character references. Do not include relatives and former employers.

Name Rev. D. T. Cason Address 1502 Webb St, Sumter S.C

Name Mr. Legare Stuart D.M. Address 15 Webb St Sumter S.C

Name Mrs. L. Day Hodges Address 825 Webster St, Sumter S.C

I agree to submit a birth certificate or other evidence to substantiate my age. I have rechecked this application for errors and understand that the furnishing of misinformation or the withholding of information may subject me to immediate dismissal.

Witness Signature Mrs Mabel Williams

DO NOT WRITE BELOW THIS LINE

Medical Exam: Passed Rejected Restrictions: Date Dr's. Initials:

DATE	DEPARTMENT	POSITION	RATE	REMARKS

Sofia Ex # 10 for Identification
L P Ci

WONDERLIC

PERSONNEL TEST

FORM I

NAME Mabel Williams Date Aug 25-1966
(Please Print)

READ THIS PAGE CAREFULLY. DO EXACTLY AS YOU ARE TOLD.
DO NOT TURN OVER THIS PAGE UNTIL YOU ARE
INSTRUCTED TO DO SO.

This is a test of problem solving ability. It contains various types of questions. Below is a sample question correctly filled in:

REAP is the opposite of

1 obtain, 2 cheer, 3 continue, 4 exist, 5 sow ..... [5]

The correct answer is "sow." (It is helpful to underline the correct word.) The correct word is numbered 5. Then write the figure 5 in the brackets at the end of the line.

Answer the next sample question yourself.

Gasoline sells for 23 cents per gallon. What will 4 gallons cost? ..... [ ]

The correct answer is 92¢. There is nothing to underline so just place "92¢" in the brackets.

Here is another example:

MINER MINOR — Do these words have

1 similar meaning, 2 contradictory, 3 mean neither same nor opposite? ..... [ ]

The correct answer is "mean neither same nor opposite" which is number 3 so all you have to do is place a figure "3" in the brackets at the end of the line.

When the answer to a question is a letter or a number, put the letter or number in the brackets.
All letters should be printed.

This test contains 50 questions. It is unlikely that you will finish all of them, but do your best. After the examiner tells you to begin, you will be given exactly 12 minutes to work as many as you can. Do not go so fast that you make mistakes since you must try to get as many right as possible. The questions become increasingly difficult, so do not skip about. Do not spend too much time on any one problem. The examiner will not answer any questions after the test begins.

Now, lay down your pencil and wait for the examiner to tell you to begin!

Do not turn the page until you are told to do so.

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PRINTED IN U.S.A.

Form 1

1. The Eleventh month of the year is
   1 October, 2 May, 3 November, 4 February ..... [11] Y
2. SEVERE is the opposite of
   1 harsh, 2 stern, 3 tender, 4 rigid, 5 unyielding ..... [7] Y
3. In the following set of words, which word is different from the others?
   1 certainty, 2 dubiousness, 3 assuredness, 4 confidence, 5 sureness ..... [5] Y
4. Answer by printing YES or NO. Does B.C. mean "before Christ"? ..... [___] X
5. In the following set of words, which word is different from the others?
   1 sing, 2 call, 3 chatter, 4 hear, 5 speak ..... [4]
6. PURE is the opposite of
   1 immaculate, 2 indecent, 3 incorrupt, 4 innocent, 5 classical ..... [5] Y
7. Which word below is related to chew as smell is to nose?
   1 sweet, 2 stink, 3 odor, 4 teeth, 5 clean ..... [4]
8. How many of the five pairs of items listed below are exact duplicates? ..... [4] Y

Sharp, M. C.	Sharpe, M. C.
Fiedler, E. H.	Fiedler, E. H.
Connor, M. J.	Conner, M. J.
Woesner, O. W.	Woerner, O. W.
Soderquist, P. E.	Soderquist, B. E.

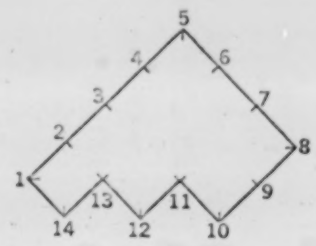
9. CLEAR is the opposite of
   1 plain, 2 obvious, 3 explicit, 4 distinct, 5 dim ..... [5] Y
10. A dealer bought some cars for $3500. He sold them for $5500, making $50 on each car. How many cars were involved? ..... [50] X
11. ADOPT ADEPT — Do these words have
    1 similar meanings, 2 contradictory, 3 mean neither same nor opposite? ..... [5] X
12. Lemons sell at 3 for 15 cents. How much will 1½ dozens cost? ..... [2] X
13. How many of the six pairs of items listed below are exact duplicates? ..... [4] Y

5296	5296
66986	69686
834426	834426
7354256	7354256
61197172	61197172
83238324	83238234

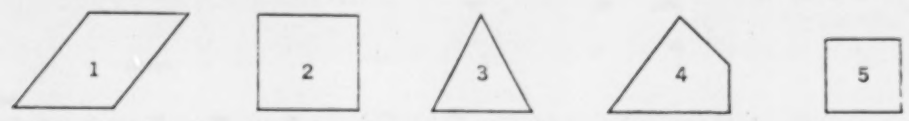
14. FAMILIAR is the opposite of
    1 friendly, 2 old, 3 strange, 4 aloof, 5 different ..... [1] X
15. Which number in the following group of numbers represents the smallest amount?
    6 .7 9 36 .31 5 ..... [5] X
16. Suppose you arranged the following words so that they made a true statement. Then print the last letter of the last word as the answer to this problem.
    of salt the life Love is ..... [L] Y
17. One of the numbered figures in the following drawings is most different from the others. What is the number in that drawing? ..... [4]

18. Two men caught 36 fish; X caught 8 times as many as Y. How many fish did Y catch? ..... [4] X
19. REFLECT REFLEX — Do these words have
    1 similar meanings, 2 contradictory, 3 mean neither same nor opposite? ..... [___] X
20. Suppose you arrange the following words so that they make a complete sentence. If it is a true statement, mark (T) in the brackets, if false, put an (F) in the brackets.
    moss A stone gathers rolling ..... [F]
21. Assume the first 2 statements are true. Is the final one: (1)true, (2)false, (3)not certain?
    Most progressives are business men. Most progressives are Republicans. Some business men are Republicans. ..... [___] X
22. Two of the following proverbs have similar meanings. Which ones are they? ..... [___] X
    1. Straws show which way the wind blows.
    2. An empty sack can't stand straight.
    3. No doctor at all is better than three.
    4. All is not gold that glitters.
    5. Too many cooks spoil the broth.
23. Look at the row of numbers below. What number should come next?
    73 77 66 62 59 56 52 53 45 46 38 51 ? ..... [39] X
24. The hours of daylight and darkness in SEPTEMBER are nearest equal to the hours of daylight in 1 June, 2 March, 3 May, 4 November ..... [___]
25. Assume the first 2 statements are true. Is the final one: (1)true, (2)false, (3)not certain?
    Bill is the same age as Mary. Mary is younger than John. Bill is younger than John [___]
26. A train travels 75 feet in ¼ second. At this same speed, how many feet will it travel in 5 seconds? ..... [___]
27. Five pounds of meat sells for $2.00; how many pounds can you buy for 80 cents? ..... [___]
28. STRETCH SPREAD — Do these words have
    1 similar meanings, 2 contradictory, 3 mean neither same nor opposite? ..... [___]

29. This geometric figure can be divided by a straight line into two parts which will fit together in a certain way to make a perfect square. Draw such a line by joining two of the numbers. Then write the numbers as the answer. ..... [___]



30. Assume the first 2 statements are true. Is the final one: (1)true, (2)false, (3)not certain?
Fred greeted Mary. Mary greeted Ned. Fred did not greet Ned. ..... [___]
31. An automobile that costs $2490 has decreased 33⅓% in value by the end of the season. What was its value at that time? ..... [___]
32. One of the numbered figures in the following drawings is most different from the others. What is the number in that drawing? ..... [___]



33. A skirt requires 2⅓ yards of material. How many can be cut from 42 yards? ..... [___]
34. Are the meanings of the following sentences: 1 similar, 2 contradictory, 3 neither similar nor contradictory? No doctor at all is better than three. The more doctors, the more sickness. [___]
35. ENLARGE AGGRANDIZE — Do these words have
1 similar meanings, 2 contradictory, 3 mean neither same nor opposite? ..... [___]
36. Are the meanings of the following sentences: 1 similar, 2 contradictory, 3 neither similar nor contradictory? It is always well to moor your ship with two anchors. Don't put all of your eggs in one basket. ..... [___]
37. For $3.60 a grocer buys a case of oranges which contains 12 dozen. He knows that two dozen will spoil before he sells them. At what price per dozen must he sell the good ones to gain ⅓ of the whole cost? ..... [___]
38. PRETENSIONS PRETENTIOUS — Do these words have
1 similar meanings, 2 contradictory, 3 mean neither same nor opposite? ..... [___]
39. When potatoes are selling at $.0125 a pound, how many pounds can you buy for fifty cents? [___]
40. One number in the following series does not fit in with the pattern set by the others. What should that number be? ¼ ⅛ ⅛ ¼ ⅛ ⅛ ¼ ⅛ ⅙ ..... [___]
41. IMAGE IMAGINARY — Do these words have
1 similar meanings, 2 contradictory, 3 mean neither same nor opposite? ..... [___]
42. How many square yards are there in a floor which is 6 feet long by 21 feet wide? ..... [___]
43. Are the meanings of the following sentences: 1 similar, 2 contradictory, 3 neither similar nor contradictory? All good things are cheap, all bad things very dear. Goodness is simple; badness is manifold. ..... [___]
44. A soldier shooting at a target hits it 12½% of the time. How many times must he shoot to be certain he will register 100 hits? ..... [___]
45. One number in the following series does not fit in with the pattern set by the others. What should that number be? ¼ ⅙ ⅛ 1/9 1/12 1/14 ..... [___]
46. Three men form a partnership and agree to divide the profits equally. X invests $4500, Y invests $3500, Z invests $2000. If the profits are $2400, how much less does X receive than if the profits were divided in proportion to the amount invested? ..... [___]
47. Two of the following proverbs have similar meaings. Which ones are they? ..... [___]
1. Perfect valor is to do without witnesses what one would do before all the world.
2. Valor and boastfulness never buckle on the same sword.
3. The better part of valor is discretion.
4. True valor lies in the middle between cowardice and rashness.
5. There is a time to wink as well as to see.
48. Are the meanings of the following sentences: 1 similar, 2 contradictory, 3 mean neither similar nor contradictory? After the event even a fool is wise. No man ever became wise by chance. ..... [___]
49. Three of the following 5 parts can be fitted together in such a way to make a triangle. Which 3 are they? ..... [___]

50. In printing an article of 24,000 words, a printer decides to use two sizes of type. Using the larger type, a printed page contains 900 words. Using the smaller type, a page contains 1200 words. The article is allotted 21 full pages in a magazine. How many pages must be in the smaller type? ..... [___]

CHARGE OF DISCRIMINATION
(Under Title VII of the Civil Rights Act of 1964)

This form is to be used only to file a charge of discrimination based on RACE, COLOR, RELIGION, SEX, or NATIONAL ORIGIN.

MAIL TO: Equal Employment Opportunity Commission
1800 G Street, N. W.
Washington, D. C. 20506

Copies E & H all for Identification

Case File No. AT 6-9-678

(please print or type)

1 YOUR NAME: Mrs. Maebelle Williams PHONE NUMBER: (250-40-6037)
STREET ADDRESS: 835 Hubb St.
CITY: Sumter STATE: South Carolina ZIP CODE: 29150

2 WAS THE DISCRIMINATION BECAUSE OF: (please check one) (specify)
☒ Race or Color ☐ Religious creed ☐ National origin ☐ Sex

3 Who discriminated against you? Give the name and address of the employer, labor organization, employment agency and/or apprenticeship committee. If more than one, list all.
NAME: Campbell Soup Company
STREET ADDRESS:
CITY: Sumter STATE: S. C. ZIP CODE: 29150
AND (other parties if any):

4 Have you filed this charge with a state or local government agency? ☐ Yes ☒ No

5 If your charge is against a company or a union, how many employees or members? Number: 700 ☐ Do Not Know

6 The most recent date on which this discrimination took place: Month: August Day: 23 Year: 1966

7 Explain what unfair thing was done to you:

I feel that I have been discriminated against because I am a Negro, the Campbell Soup company, excluded me from the ranks of the employed, that several whites were employed, without being tested as was required of Negro applicants. That Negroes have passed test and have not been employed.

(use other side of this page if necessary)

8 I SWEAR OR AFFIRM THAT I HAVE READ THE ABOVE CHARGE AND THAT IT IS TRUE TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF.

DATE: 10-5-66 Mrs Maebell Williams
(SIGN HERE)

Subscribed and sworn to before me this 5 day of October 1966

Willie H. Walker Investigator E. E. O.
(NAME) (TITLE)

155 SEORE

KINGWOOD, IDELL, D. et al. VS. CAMPBELL SOUP CO., INC. dba SUMPTER SOUTH CAROLINA 1967 Box 38
(JOB DISCRIMINATION Folder 7

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

- x

IDELL D. KINGWOOD, et al., :

Plaintiffs, :

-against- : Civil Action
No. 67-167

CAMPBELL SOUP COMPANY, INC., :
A New Jersey Corporation, et al., :

Defendants. :

- x

DEPOSITION of the defendant CAMPBELL SOUP COMPANY, INC., by WILLIAM B. MURPHY, its President, taken by the plaintiffs pursuant to notice dated August 1967, at the offices of Campbell Soup Company, Inc., Camden, New Jersey, on Thursday, September 7, 1967, at 2:15 P.M.

UNITED REPORTING SERVICE
150 NASSAU STREET
NEW YORK, N. Y. 10038

WORTH 2-5331
2-6869

A P P E A R A N C E S :

For the Plaintiffs:

MESSRS. FINNEY & GRAY,
MATTHEW PERRY, ESQ. and
CARL RACHLIN, ESQ.
16-1/2 W. Liberty Street
Sumter, South Carolina
By: ERNEST A. FINNEY, JR., ESQ.
-and-
CARL RACHLIN, ESQ., of counsel

For the Defendants:

MESSRS. THOMPSON, OGLETREE & HAYNSWORTH
The Daniel Building
Greenville, South Carolina
By: ROBERT T. THOMPSON, ESQ., of counsel

- - - - -

MR. RACHLIN: It is stipulated between counsel that the signing and the reading of the testimony is waived; that the testimony, as taken, will be presented to both counsel for the defendants and the plaintiffs for their approval prior to the submission to the Court; and that objections will be waived at this time and will be raised at such time as the evidence adduced will be presented to the Court, with the exception that if counsel feels that there are things out of the scope of discovery, he will object at this time.

MR. THOMPSON: We agree to that stipulation.

W I L L I A M B. M U R P H Y, called as a witness, testified as follows:

DIRECT EXAMINATION

BY MR. FINNEY:

Q Will you state your name, please, sir?

A William B. Murphy.

Q What is your official capacity with Campbell Soup Company?

A President.

Q For how long?

A Since 1953.

Q What other positions do you have with relation to the other companies, subsidiaries, such as Swanson Food Division?

A I am President of our Canadian subsidiary. I have to look it up for you.

Q All right.

A Actually, I think I'm Chairman of the -- no, I'm not. We operate as a family of companies.

Q Do you have any official connection with the Swanson Division of Campbell Soup Company?

A Swanson Division is a part of the Campbell group of companies. It's wholly owned.

Q It is wholly owned?

A Any Swanson is a wholly-owned subsidiary.

Q And your official capacity as President of Campbell Soup Company is what?

A I'm chief executive officer of all the companies.

Q Do you have any official connection with the Campbell Soup Company, Sumter Plant, Incorporated?

A The Sumter company is a wholly-owned subsidiary. I serve as chief executive officer in connection with that company.

Q All right.

A In effect, that is.

Q Would you state whether or not any of the work which is performed by the Campbell Soup Company, Sumter Plant, Inc. is performed pursuant to government contracts.

A Not that I know of.

Q To your knowledge.

A Not that I know of.

Q Would you state whether or not Campbell Soup Company itself performs work pursuant to government contract.

A Campbell Soup Company sells some of its

regular products to the government. We do not have so-called government contracts. We bid on them, but we never get them.

Q Who would have the information as to whether or not Campbell Soup Company, Sumter Plant, Incorporated has government contracts? You said not that you know of.

A The plant manager.

Q The plant manager would have that?

A Yes.

Q As far as you know at this time you do not have any contracts as such with the federal government?

A No.

Q That is, any of the Campbell Soup companies or its subsidiaries?

A None that I know of.

Q Would you state whether or not the Company or any of its subsidiaries performed any subcontract work through other agencies for the federal government.

A Not that I know of.

Q Are you familiar with the opening of the Sumter Plant of Campbell Soup Company?

A Yes.

Q Have you had occasion to visit that plant or make a survey?

A Yes. I visited the plant during the course of its construction and I visited it since it began operations.

Q Do you know the approximate number of people employed by the Sumter Plant?

MR. THOMPSON: Just a minute. I am going to object to that question on the same basis and for the same reason that we filed objections to your interrogatories.

Now, if you plan to pursue this line, I perhaps can state the objection for the line that was followed in the interrogatories.

I am going to request the witness not to answer the question until we have disposed of those objections.

MR. FINNEY: Are you requesting or are you directing him not to answer?

MR. THOMPSON: I am directing him not to answer until we have disposed of those objections. I understand that they are scheduled for hearing on the 20th.

MR. FINNEY: 18th, it is.

MR. THOMPSON: Oh, is it the 18th?

MR. FINNEY: Yes.

MR. THOMPSON: I thought it was the 20th.

MR. FINNEY: Off the record.

(Discussion off the record.)

MR. FINNEY: It is stipulated and agreed between the parties in this action that all of the questions propounded by the plaintiffs on the defendant dated the 29th day of June, 1967 asked on deposition to Mr. William B. Murphy, President of the company, and that as to those interrogatories which defendant raised objections to, defendants' counsel instructed Mr. Murphy to refuse to answer said questions, the ground being as set forth in the defendant's objections to interrogatories as dated 14th of August, 1967; and further that Mr. Murphy followed counsel's advice.

MR. THOMPSON: I would add to this that this stipulation relates only to questions concerning which objections are now pending before the Federal Court and not to questions which were answered in our Answers to Interrogatories.

(Continued on Page 8)

IN THE
UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

IDELL D. KINGWOOD, et al.,

Plaintiffs,

versus CIVIL ACTION NO. 67-167

CAMPBELL SOUP COMPANY, INC.,
A New Jersey Corporation, et al.,

Defendants.

INTERROGATORIES

TO: Campbell Soup Company (Sumter Plant) Sumter, South Carolina

PLEASE TAKE NOTICE that plaintiffs demand, pursuant to Rule 33 of the Federal Rules of Civil Procedure, that defendant company answer, under oath, within fifteen (15) days after the service hereof, the following written interrogatories, which written interrogatories relate to defendant's place of business in the County of Sumter, South Carolina, known as Campbell Soup Company (Sumter Plant), Inc., and after the answer to each of the following written interrogatories identify, separately and in a manner suitable for use as a description in a subpoena, all sources of information (whether documentary, human, or otherwise) and all records maintained by defendant

company or any other person or organization upon which defendant company relied in answering the interrogatories or which pertain or relate to information called for by the interrogatories:

1. State whether or not the Campbell Soup Company (hereinafter referred to as "the company") is a corporation organized and existing by virtue of the laws of the State of South Carolina.

2. Describe generally the type of business carried on by the company.

3. State the relationship between the company and Campbell Soup Company, Inc., Camden, New Jersey.

4. State whether any of the work done by the company is pursuant to a contract with any department of the United States Government.

5. State whether or not the company performs any sub-contracts through its parent company with any agency of the United States Government.

6. State the date when the company opened its Sumter Plant.

7. State the number of persons employed by the company as of September 1, 1966, January 1, 1967, April 1, 1967, and June 1, 1967.

8. State the number of Negro persons employed

by the company as of September 1, 1966, January 1, 1967, April 1, 1967, and June 1, 1967.

9. State whether the employees of the company are classified and/or paid according to the job performed. If the answer to either of these is "yes," list all department job classification within each department, and if no departments, then list all the various classification or categories that are utilized by the company in making work assignments for its employees.

10. List the name of each Negro, currently employed by the company and indicate with the respect to each such person the length of time so employed, initial job classification, and the number of wage increases during said employment, and the number of times transferred to a higher job classification during said employment.

11. List the names of each White person currently employed by the company and indicate with respect to each such person the length of time so employed, initial job classification, and the number of wage increases during said employment, and the number of times transferred to a higher job classification during said employment.

12. List the total number of Negroes which

have at any time since the opening of the plant been employed by the company.

13. List the total number of White persons which have at any time since the opening of the plant been employed by the company.

14. State whether or not defendant company maintains customs, policies, or practices of not hiring Negroes in certain of its job classifications.

15. State whether or not defendant company maintains customs, policies, or practices of not hiring White persons in certain of its job classifications.

16. State with respect to each job classification listed in response to Interrogatory No. 9, the number of Negroes who are foremen, assistant foremen, supervisors, and inspectors.

17. State with respect to each job classification listed in response to Interrogatory No. 9, the number of White persons who are foremen, assistant foremen, supervisors, and inspectors.

18. With respect to each job classification listed in response to Interrogatory No. 9, state the average salary or hourly wage for workers employed therein on the last day of May, 1967.

19. State the number of Negroes who applied for

jobs at the company between January 1, 1965 and May 1, 1967.

20. State the total number of applicants enumerated in response to Interrogatory No. 19 that were hired by the company.

21. State the total number of applicants for jobs at the company between January 1, 1965 and May 1, 1967.

22. State the number of applicants enumerated in response to Interrogatory No. 21 that were hired by the company.

23. State the name and number of job vacancies within each job classification listed in response to Interrogatory No. 9 (including vacancies to be filled by both existing employees and new hirees) between January 1, 1965 and May 1, 1967.

24. List the number and names of Negroes hired for or transferred to job vacancies listed in response to Interrogatory No. 22 between January 1, 1965 and May 1, 1967.

25. List the number and names of White persons who have made application for job vacancies listed in response to Interrogatory No. 22 between January 1, 1965 and May 1, 1967.

26. State whether any Negro workers are given job classifications having different titles from the job classifications of any White workers performing essentially the same duties as such Negro workers. If so, indicate the classifications involved, the number of Negroes or Whites in each such classification, state the salary or hourly rate of pay with respect to each classification, and state the reason for different classifications, for workers performing essentially the same duties.

27. Of the various job classifications listed in response to Interrogatory No. 9, list those which come within the general category "craftsman" or "skilled."

28. List the number of Negroes employed as craftsmen or skilled workers on the dates called for in Interrogatory No. 7.

29. List the number of White persons employed as craftsmen or skilled workers on the dates called for in Interrogatory No. 7.

30. Since January 1, 1965, how many of the company's White craftsmen or skilled workers, if any, have been trained or are in training by the company.

31. Since January 1, 1965, how many Negroes, if any, have been trained or are in training as craftsmen or skilled workers by the company.

32. List the names of Negroes employed since January 1, 1965, and list their starting wages.

33. List the names of all Whites employed since January 1, 1965, and list their starting wages.

34. State the average hourly wage or salary of all White employees of the company as of the last day of May, 1967.

35. State in detail the training and educational opportunities made available to any and all employees of the company.

36. What objective standards, if any, does the company have in its promotional system?

37. Does seniority play a part in the opportunity for promotion or advancement?

38. State the number of Negroes employed as office workers and indicate the job classification of such Negro office workers.

39. Since January 1, 1965, list the names of Negroes who have been given or are being given on-the-job training and with respect to each such person the job classification for which he was or is being trained.

40. State whether a representative of the Equal Employment Opportunity Commission has attempted to conciliate the formal charges asserted against the

company by the plaintiffs.

41. If the answer to Interrogatory No. 40 is "yes", state any agreements, adjustments, or charges resulting from conciliation efforts.

42. State whether you have received any notices, posters, bulletins, or other documents from the Equal Employment Opportunity Commission with instructions to post them in conspicuous places on the premises of your plant.

43. If the answer to Interrogatory No. 42 is "yes", state where and when such notices, posters, bulletins or documents were posted and if the same are posted at the present time.

44. When and how was Sumter, South Carolina, selected as a plant site?

45. What other communities were under consideration for the site of the Sumter Plant?

46. Who are the persons responsible for the selection of the site?

47. Was an agency, public or private, used in the search for and selection of the plant site? If the answer is "yes", what agency and who were the persons involved?

48. Were reports prepared on Sumter and other

plant sites under consideration? If the answer is "yes", who prepared these reports?

49. To what extent did the labor market consideration enter the plant selection processes?

50. Who prepared the labor market report on the Sumter labor market?

51. When was the first labor market report on Sumter prepared?

52. Did the labor market reports, prior to the final selection of Sumter as a plant site, describe the various labor markets by race, sex, educational skills, unemployment ratio and the extent of unionization around each potential plant site?

53. Would you, without motion to produce, submit all reports, memoranda, correspondence, and other documents developed during the plant selection process that deal with the labo r market conditions of the potential plant sites?

54. Did the company make an evaluation of the labor market reports. If the answer is "yes", would you attach copies of the evaluation.

55. What labor market factors were considered in chosing Sumter as a plant site?

56. After Sumter was selected as a plant site,

what additional labor market studies were undertaken?

57. If the answer to Interrogatory No. 56 is "yes", when were these additional labor market studies made?

58. By whom were these additional Sumter labor market studies undertaken?

59. Would you, without motion to produce, attach a copy of these additional labor market studies.

60. When did the first person responsible for company personnel practices appear in Sumter?

61. Who was the personnel referred to in Interrogatory No. 60?

62. What is his training and experience in the area of personnel work?

63. When was the first person responsible for staffing of the Sumter plant permanently assigned or physically present in Sumter?

64. Prior to the hiring or selection of potential employees, did the company personnel representative apprise himself of the labor market conditions of Sumter?

65. Was the appraisal of the labor market in Sumter reduced to writing in any form?

66. If the answer to Interrogatory No. 65 is

"yes", would you attach a copy of this appraisal without a motion to produce.

67. What policies and personnel procedures of Campbell Soup Company, Inc., Camden, New Jersey, relating to personnel matters were transmitted to Sumter for implementation.

68. What personnel-selection criteria were implemented in Sumter?

69. What tests were used by the company and its Sumter Plant as a criteria for prospective employees?

70. Describe the purpose of each of the tests mentioned in the answer to Interrogatory No. 69.

71. What has been the policy of this defendant company with regard to personnel testing since their hiring?

72. Has there been any modification or changes in this policy since its inception? If so, please explain.

73. Under what circumstances does the company use the Wonderlic Test?

74. Does the company use the Wonderlic Test for the purpose of selecting service, unskilled, and semi-skilled workers in Sumter?

75. Who selected the Wonderlic Test for use in

Sumter?

76. Were any preliminary studies of the Wonderlic Test made before it was selected as a criteria for employment?

77. If the answer to Interrogatory No. 76 is "yes", would you describe these studies and furnish, without a motion to produce, a copy of the studies.

78. Who are the company personnel who have administered the Wonderlic Test?

79. Give the training and qualifications of persons mentioned in Interrogatory No. 78.

80. What guides were used in the administration of the Wonderlic Test.

81. What efforts were made to validate the Wonderlic Test in the Sumter area labor market or in the plant before its use as an employment criteria.

82. What efforts were made to validate the Wonderlic Test in the Sumter area labor market or in the plant after its use as an employment criteria.

83. Was a job analysis made for service, unskilled, and semi-skilled jobs in Sumter?

84. If the answer to Interrogatory No. 83 is "yes", would you attach, without a motion to produce, a copy of this analysis.

85. If a job analysis was made, what critical job factors were identified in these occupations?

86. What human abilities does the company purport to measure by the Wonderlic Test.

87. Are these purportedly measured abilities related to the critical job factors in the service, unskilled and semi-skilled occupations of the company?

88. What validity studies were carried out to assure the relatedness of the test scores to the critical job traits.

89. How does the company use the Wonderlic Test?

90. Do you believe that the test scores on the Wonderlic Test are descriptive of individuals?

91. If the answer to Interrogatory No. 90 is "yes", describe the reasons for your conclusions.

92. If the answer to Interrogatory No. 90 is "yes", in what manner do these scores describe an individual?

93. What significance do you place on the test scores on the Wonderlic Test?

94. Do you use the Wonderlic Personnel Test to predict job performance, job stability, trainability, promotional ability, or other employee traits?

95. How do you assess the predictability in using the Wonderlic Test?

96. What testing service or agency does the company use in the establishment or evaluation of the Wonderlic Test?

97. Are there any persons now employed by the company who did not meet the standards set by the company on the Wonderlic Test? If so, would you give their names, the category of their jobs, and the date of their employment.

98. Are there any persons now employed by your company who have not taken the Wonderlic Test?

99. Have you consistently used the same form of the Wonderlic Test?

100. If not, did you adjust scores to equate the different forms of the Wonderlic Test?

101. How and when did you arrive at a cutting score of 11 on the Wonderlic Test?

102. Did you consistently use the first page of the test form on applicants taking the test?

103. Were there any validity studies made to determine the relationship between education and job performance in the service, unskilled, and semi-skilled occupations of the company? If so, would you attach,

without a motion to produce, a copy of such studies?

104. How is education related to the occupations in the service, unskilled, and semi-skilled job categories in your company?

105. What are the educational standards used by the company with respect to service, unskilled, and semi-skilled jobs?

106. When did you become aware of the educational differences between White and Negro workers in the labor force in Sumter?

107. Does your educational appraisal take into account the quality of schools providing the education?

108. Has the company now in its employ any persons who do not meet the educational requirements established by the company? If so, would you give their names, the category of their jobs, and the dates of their employment.

109. To what degree and in what manner is formal education an important prerequisite for employment in the service, unskilled, and semi-skilled jobs with your company?

110. On what dates did you correlate job success and formal education at the Sumter Plant?

111. How was this correlation established?

112. Would you attach, without a motion to produce, a copy of these correlation studies.

113. Were any validation studies made of the relationship between education and job performance in the job categories at the Sumter Plant? If so, would you attach a copy of such studies without a motion to produce.

114. Did you make a study of the quality of the schools in the Sumter area? If so, please attach, without a motion to produce, a copy of this study.

115. State what the relationship between the company and the Sumter Chamber of Commerce has been since the company began to look into Sumter as a possible site for the plant.

116. State what the relationship, if any, was between the company and the Sumter Chamber of Commerce in the area of reference checks or employment practices.

117. If you would, without a motion to produce, attach a copy of any correspondence or agreements or other data between the company and the Sumter Chamber of Commerce.

These interrogatories are continuing in character, so as to require you to file supplemental answers if you obtain further or different information

before trial.

Dated at Sumter, North Carolina this 29th day of June, 1967.

FINNEY & GRAY, ATTORNEYS

16-1/2 West Liberty Street
Sumter, South Carolina

Ernest A. Finney, Jr.

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Carl Rachlin
Attorneys for Plaintiffs

- - -

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

IDELL D. KINGWOOD, et al., Plaintiffs, v. CAMPBELL SOUP COMPANY, INC., A New Jersey Corporation, et al., Defendants.	CIVIL ACTION NO. 67-167 OBJECTIONS TO PLAINTIFFS' INTERROGATORIES

Defendant Campbell Soup Company (Sumter Plant) Inc., hereinafter called this Defendant, objects to the following interrogatories heretofore served upon it by the Plaintiffs on the 3rd day of July, 1967, on the

grounds stated:

1. Interrogatories Nos. 4 and 5, which inquire concerning the existence of contracts and subcontracts between this Defendant and the United States of America, on the ground that such matters are irrelevant. The Plaintiffs' alleged causes of action are based exclusively upon the provisions of 42 U.S.C. Sec. 2000e, hereinafter called the Civil Rights Act of 1964, and the application of such statutory provisions are not dependent in any manner upon the existence or non-existence of any contractual agreement between an employer and the United States of America.

2. Interrogatories Nos. 7, 8, 9, 10, 11, 12, 13, 16, 17, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 32, 33, 38, 39, 97 and 108, which inquire in various forms as to the names and numbers of Negro and other employees and applicants for employment, because:

a. The matters inquired into are irrelevant under 42 U.S.C. Sec. 2000e-2(j).

b. The furnishing of such irrelevant information would be unduly burdensome and oppressive and would work an extreme hardship upon this Defendant.

c. The furnishing of names of employees and applicants for employment is confidential business information which

this Defendant should not be required to disclose unless and until it becomes relevant to a pending issue.

3. Interrogatories Nos. 9, 16, 17, 28, 38, 103, 104 and 105, on the ground that the matters inquired into are irrelevant. As shown by the Plaintiffs' answers to this Defendant's interrogatories filed in this cause on the 9th day of June, 1967, the Plaintiffs' oral depositions taken on July 18 through 21, 1967, and the Plaintiffs' complaint herein, those Plaintiffs who have applied for employment with this Defendant have requested jobs in the manufacturing department or in the maintenance department and have not sought employment in any other departments or job classifications. Since these interrogatories request information concerning other departments and other job classifications, they request information which is irrelevant.

4. Interrogatories Nos. 10, 11, 18, 24, 25, 26, 30, 31, 32, 33, 34, 35, 36, 37, 39, 71 and 72, which inquire concerning various terms and conditions of employment of individuals who have been hired by this Defendant, on the ground that such matters are irrelevant. The Plaintiffs' causes of action are based solely upon alleged discrimination by this Defendant in failing to hire the Plaintiffs as employees and do not allege

that this Defendant has discriminated in any manner as to the terms and conditions of employment of any individuals or groups who have been hired by this Defendant.

5. Interrogatories Nos. 40, 41, 42 and 43, which inquire concerning proceedings before the Equal Employment Opportunity Commission, on the ground that under 42 U.S.C. Sec. 2000e-5(a) nothing said or done during and as a part of any endeavors by the Equal Employment Opportunity Commission to conciliate or mediate any alleged unlawful employment practices may be made public without the written consent of the parties, which has not been obtained in this cause, or used as evidence in any subsequent proceedings.

6. Interrogatory No. 52, which inquires whether labor market reports contain information as to the extent of unionization around each potential plant, on the ground that such a matter is irrelevant. The Plaintiffs' complaint only alleges discrimination based upon race under the Civil Rights Act of 1964 and does not involve any allegation covered by the National Labor Relations Act, as amended [28 U.S.C. Sec. 151 et seq.], which regulates employer-union activities.

7. Interrogatories Nos. 106 and 107, which inquire concerning alleged educational differences

between white and Negro workers in the labor force in Sumter, South Carolina, on the ground that such inquiries assume facts not proven and on the additional ground that any such alleged educational differences are irrelevant to the issues in this proceeding.

8. Interrogatory No. 113, which inquires concerning validation studies made of the relationship between education and job performance in the job categories in the Sumter plant, on the ground that such a validation is irrelevant to the issues in this proceeding.

Dated this 14th day of August, 1967.

THOMSPON. OGLETREE & HAYNSWORTH

(Signed)Robert T. Thompson

The Daniel Building
Greenville, South
Carolina

Robert T. Thompson
Attorney for Campbell Soup Company
(Sumter Plant) Inc.

DIRECT EXAMINATION (Continued)

BY MR. FINNEY:

Q Mr. Murphy, I believe you said you have been to the Sumter Plant; is that correct?

A Yes.

Q When was the last time you visited this plant?

A I believe it was early last spring.

Q What is the general type of work performed at

that plant?

A Chicken eviscerating, chicken killing, preparation of Swanson Dinners at that time.

Q Approximately how many people are employed in the chicken eviscerating --

A Gee, I --

MR. THOMPSON: I make the same objection. This goes back to the question which you asked previously in total number. If you take it piecemeal, you come to the same conclusion.

I state my objection as I stated to Question No. 7 of the interrogatories for the same reason.

MR. FINNEY: All right.

Q What is the general classification in the Campbell Soup Company, Sumter Plant, of chicken eviscerating and chicken killing jobs, Mr. Murphy?

A I don't understand.

Q Are they classified as skilled, semi-skilled, technical, administrative? What type of jobs are these?

A When the workers start out on the job it's unskilled. When the worker becomes skilled at the job, it's a highly skilled job -- more highly skilled, in my opinion, than most metal workers.

Q Are you talking about the chicken eviscerators?

A Yes.

Q And chicken killers?

A Yes.

Q Do you have any idea as to the number of people, of the total percentage of your plant personnel, who are engaged in these two areas?

A No.

Q Are you familiar with the Dictionary of Occupational Titles which is put out by the Federal Government which describes certain jobs?

A No. That would have nothing whatsoever to do with -- what the federal government says about a job has nothing to do with what we say about a job.

Q I was wondering if you were familiar with it.

A We have to run our own business.

Q Correct.

MR. THOMPSON: I think the question is whether he was familiar with a certain book.

MR. FINNEY: That's correct, the Dictionary of Occupational Titles.

THE WITNESS: I am not.

Q You do not know the percentage of your personnel at the Sumter Plant who engage in these type of occupational titles?

A No.

Q Mr. Murphy, do you maintain records here which would reflect this type of information?

A This I would not know; frankly, I wouldn't know it.

Q Were you familiar with the beginning of the Sumter Plant?

A Yes.

Q Did you review the reports which were prepared on the Sumter site before erection?

A Yes.

Q Was there publicity released indicating that Campbell Soup was going to employ people and that there was no educational requirement set forth in this publicity report?

A Not that I know of.

Q You don't know about that?

A No.

Q Did you know about the early advertisement for employees which were published by your employees in Sumter?

A No.

Q Did you have any contact with the Sumter Chamber of Commerce?

A There was a dinner --

MR. THOMPSON: Are you referring to him personally?

MR. FINNEY: Yes.

MR. THOMPSON: All right.

A (Continuing) There was a dinner given after it was finally decided to build a plant there, attended by the Governor of the State and many other people from Sumter, which I was invited to along with several other people from our company. This was my only contact.

Q Did you ever correspond with the Sumter Chamber of Commerce at all?

A No, not me personally -- not to my knowledge.

Q On your direction did some of your staff correspond with the Sumter Chamber of Commerce?

A Not at my direction.

Q Of your knowledge, did some of your staff correspond with the Sumter Chamber of Commerce?

A Not to my knowledge.

Q To your knowledge, there is no connection at all between your company and the Sumter Chamber of Commerce?

A No more than there is in any other location with any other chamber of commerce.

Q What is that, then, sir?

A The chambers of commerce are interested in the commerce of the community and I suppose they become acquainted with the element of commerce in the community. I don't know of anything special. We have no special connection with the chambers of commerce, as far as I know.

Q Were any inducements given by the Chamber of Commerce for Campbell Soup to come to Sumter?

A No, sir.

Q Did the Chamber of Commerce --

A I don't know if any were offered or not. We never pay any attention to any inducements. In fact, we are against this kind of thing.

Q Did the Chamber of Commerce have anything to do with the construction of the plant?

A Nothing.

Q Or the securing of the land?

A Not that I know of. I don't know the details of this.

Q Who would know the details of this?

A Well, the plant manager would know.

Q Was he on the scene before the plant opened?

A No.

Q Then he wouldn't know, would he?

A I suppose Mr. Hochreiner might know, Mr. George K. Budd, who is Vice President of Capital Improvements, might know.

Mr. Hochreiner was in charge of investigating the entire southeast.

Q But these are the only two people who had any connection with the Sumter community before the plant was located there; is that correct, official capacity? I realize you had other people, but I'm talking about who made policy decisions.

A Policy decisions are all made by our Board of Directors.

Q Do you recall the meeting at which your Board of Directors decided to move to Sumter?

A This was a meeting of the Board, and I have forgotten the date, on which a formal recommendation and the complete report of all factors involved, having to do with utilities, the kind of site, cost of shipping goods into the plant, cost of shipping goods out of the plant -- all the things that go into the study of running a plant economically; an economic plant study was made. These were made in the different departments of the company. There was a consultation with the Legal Department,

consultation with the Engineering Department, consultation with the Personnel Department, many, many departments in the company.

This is just a general thing that every company does, and I suppose we do the same thing every other company does. We looked at the entire southeast.

Q Mr. Murphy, are you familiar with what your employment requirements were on July 1, 1965, as far as education and testing?

A I don't know what our -- what significance does July 1, 1965 have?

Q That was the approximate opening date of the Sumter Plant.

A Thank you.

No, I'm not.

Q Are you familiar with any changes in your qualifications for employment since July 1, 1965?

A No.

Q Who would be --

A There was only one qualification where I stepped in. We had to hire the best doggone labor force we could find; that's the only qualification.

Q That was the only qualification?

A That is for every plant in this company and no

matter where it is located.

Q As chief executive of this company you say the only qualification is to hire the best labor force that you can find?

A That's right.

Q Do you put any test yourself?

A No.

Q Does your Board of Directors --

A No.

Q -- advise any test for jobs?

A No.

Q Does your Board of Directors require any educational standards for jobs?

A No.

Q So, if these factors are introduced at a plant, it is on a local level that they are introduced; is that right?

A Well, my instructions are to our Vice President in charge of Personnel to employ the finest labor force he could find -- we don't call it labor force because it involves all kinds of salaries, hourly, weekly and so forth. It is a work force.

Q As far as the company is concerned, there are no written distinctions or written directives as to the

things we mentioned?

A No.

Q Education?

A No.

Q Testing?

A Not as far as I am concerned.

Q And none to your knowledge?

A As far as I am concerned, there is only one instruction and that is the best labor force without regard for any other factor.

Q Did you have an occasion, as President of this company, to read the reports evaluating the various sites before Sumter was selected as a plant site?

A I read a myriad of reports because there was a whole investigation of the southeast, and it had a lot to do with a lot of different things. I can't recall individual reports.

We investigated -- this was a terribly thorough investigation.

Q Who would have copies of these reports and investigations, Mr. Murphy?

A I think they come under George K. Budd.

Q Mr. Budd would have those?

A Yes.

Q Does Campbell Soup Company, sir, follow a policy of allowing educational opportunities for its employees once a person is employed; does it have a policy or program for upgrading within the framework of the company?

A Well, I'm not sure I understand your question.

We encourage all employees to acquire additional education.

Q But you do not have a program --

A We'd love to have our employees improve themselves.

Q You do not have a program of on-the-job training as such at any of your plants now?

A I wouldn't know this.

Q You don't know this?

A Every plant has training programs. You see, you are asking me questions that I cannot give you an answer to. Every plant has training programs.

When we employ a person as a stenographer in this office, she has to be trained to do our work.

Q I see.

A When you say do we have programs of training, how can you run a business without having training programs?

Q I am talking about the programs which are not essentially a part of your job.

Do you have programs in Chicago where you give persons of different national origin training in English?

A We have a special program in Chicago.

Q So you do have some special programs to upgrade the personnel other than on the job.

A We have such a program in Chicago.

Q Is that a part of company policy?

A That is a policy for Chicago.

Q Do you have any such policy or program for Sumter?

A Well, when there are many more applicants than are needed for a job, this kind of a program is not necessary. In Chicago it is necessary.

MR. THOMPSON: Your answer would be "No," I guess?

THE WITNESS: That's right, "No."

Q Can you tell me when and how Sumter was selected as the plant site, Mr. Murphy?

A When and how?

Q Yes.

A Well, I think about a year and a half before the plant opened, that would be my general statement.

Q What would be the factors that entered into the "how," as you recall them?

A How?

Q Why did you select it?

A Well, it's a tremendously long set-up including economic factors and everything to do with the operation of the plant. Mostly engineering data.

Q I see.

A There was also the fact that we did not have an operation of this type in this whole section of the east. We had them in the middle west and we had them in the far west. This was a part of the country where we didn't have that operation.

You see, we were seeking a plant of this general type in the area from Washington to New Orleans, say.

Q Would you say that Mr. Budd and Mr. Hochreiner were the persons in your company who were responsible for making the decision?

A No. For making the study.

Q And the Board of Directors made the decision?

A That's right.

Q Did you hire any outside company or persons to help make the study or to supplement the study?

A Not to my knowledge.

Q No agency, public or private, was involved in this study?

A Not to my knowledge.

Q Except your people?

A That's right.

Q Did your study include a labor market report and labor market considerations?

A Yes.

Q And it also included consideration of racial background of the people in the adjoining area and in Sumter County?

A No.

Q It did not?

A No.

Q Your study did not reveal any factors?

A I don't know if it revealed any because it was not a factor in the study. We are color-blind, we do not pay any attention to that.

Q My question is: Did your study reveal the racial --

A Not to my knowledge.

Q Not to your knowledge?

A I don't recall it.

Q You don't recall it?

A No.

Q All right.

Is that study, the result of that study, now in the hands of Campbell Soup Company New Jersey or Campbell Soup Company Sumter Plant?

A Gee, I don't know. That's a year and a half ago. I don't know.

Q Would the study have been destroyed or anything by now, or would you still maintain it?

A Frankly, I don't know.

Q Would you make an effort, sir, to locate that study and advise us?

MR. THOMPSON: Mr. Finney, you know the ways to subpoena papers without asking the witness to supply them.

If you want to subpoena papers, we will be glad to comply with whatever the requirements of the law places on us.

MR. RACHLIN: He cannot ask a witness to produce a paper?

MR. THOMPSON: I simply question the propriety of asking a witness to locate a paper. You can subpoena it, and I advise you of that.

MR. RACHLIN: Are you suggesting that we must

subpoena it? If we request this at this time, will you advise us whether you will try to find it?

MR. THOMPSON: If you are making such a request at this time, I will be glad to consider it and advise you.

MR. KACHLIN: All right.

MR. FINNEY: Fine.

Q I believe you answered my question on this one, Mr. Murphy. You said there was a labor market report?

A Yes.

Q And this labor market report was evaluated by the company?

A We don't use that as such. Manpower availability.

Q Manpower availability, all right.

Did you have any contact or communication with the South Carolina Development Board?

A I wouldn't know that.

Q Who would have that information?

A I suppose Mr. Budd or Mr. Hochreiner would.

Q But to your knowledge there weren't any?

A As far as I know.

Q Were any personnel policies and procedures transmitted from Campbell Soup Company to Sumter for

implementation down there, to your knowledge?

A Not to my knowledge. I don't know.

Q Do you know what tests they used in other companies of the Campbell Soup Company as criteria for unskilled jobs?

A No, I don't.

Q You don't know of any tests which are used?

A I'm not familiar with any. I don't know even if there are any.

Q Mr. Murphy, would you give me the divisions of Campbell Soup Company that you can recall offhand, including the subdivisions.

A We don't have what is called "divisions." We have separate subsidiaries.

Q What are they?

A Campbell Soup Company in Canada, we have a company in England, we have a company in Belgium, a company in France, a company in Italy, a company in Mexico, a company in Australia, a sales company, frozen food distributing company, Pepperidge Farm Company.

I suppose there are some others, but those are the major subsidiaries. They are all part of the company.

Q What is the Swanson Division? Is it a

wholly-owned subsidiary?

A Well, Swanson is a company that was acquired back in 1955, C.A. Swanson & Sons. It became a wholly-owned subsidiary. Swanson had certain subsidiaries like C.A. Swanson & Sons of Massachusetts; I suppose they had a half dozen other things which were part of it. This is a part of Campbell Soup, an integral part of Campbell Soup Company.

Q Right.

A Now, there is a Campbell Soup Company of Sumter.

Q Sumter Plant?

A With a legal entity, but as much a part of Campbell Soup Company as our plant in Texas, as our plant in Napoleon, Ohio, as far as operations are concerned.

Q Now, the Sumter Plant, I believe, is a part of the Swanson -- it is named Swanson Division. I don't know if it is part of it. Is it a part of the Swanson Division of Campbell Soup Company?

A Swanson is not a division.

Q It's a subsidiary?

A We make Swanson products.

Q I see.

A We make Swanson products in places where we make Campbell's Soup. We make Swanson Chicken Broth,

for example, in the chicken soup plant.

Q Do you know what the divisions or the classifications are in the Sumter Plant or in any other plant?

A I know what they are in the company.

Q What are they in the company?

A Employees are paid on what we call an hourly payroll. They are paid on the hour.

Q Yes?

A Then there are other employees that are paid by the week. Then there are employees that are paid on a semi-monthly basis and we call that the monthly payroll.

Q Now, these hourly payroll --

A The hourly and the weekly are subject to the overtime laws. The monthly are not.

Q -- hourly and weekly payrolls, are these generally what we would call the semi-skilled or unskilled positions in the plant? These are the lower paying positions in the plant?

MR. THOMPSON: Read that question back.

(The pending question was read by the reporter.)

A Plant being distinct from the office?

Q Yes.

A The hourly payroll employees would be generally lower, at lower wage rates than the weekly.

Q Would they, in general, be the unskilled employees?

A Most unskilled employees are paid on the hour, yes. We also have unskilled employees on the weekly payroll.

Q But the majority of the unskilled payroll falls on the hourly payroll?

A I'm bothered by this "unskilled" because we don't hire anybody unskilled. Untrained, you mean?

Q Untrained, yes.

A Unskilled can't get a job with us in any plant, I hope; a person without skill, without anything. We try to hire the best people we can find.

Q How do you go about determining the skills before you hire?

A This is up to our Personnel Department.

Q There is no company policy on it?

A We hire the best people we can find.

Q My question is: How do you go about determining? You mentioned the unskilled --

A I think you better ask that of Personnel Department. They have the detailed knowledge of it and

I do not.

Q There is no company policy on it?

A As to the details?

Q Yes.

A No, just the over-all policy.

Q Do you have any idea how many or what percentage of your total number of employees are unskilled or hourly employees?

A Well, I would hope none of them are unskilled.

Q The hourly employees --

MR. THOMPSON: Excuse me. It is not clear to me whether you are referring to the Sumter Plant or to the entire Campbell Soup organization.

MR. FINNEY: The Campbell Soup Company now.

MR. THOMPSON: The entire organization?

MR. FINNEY: Yes.

MR. THOMPSON: I think it would be helpful to Mr. Murphy if you would specify, otherwise the record will be vague.

You asked him as far as his own knowledge is concerned, I assume; is that right?

MR. FINNEY: Yes.

MR. THOMPSON: We have other people who might be more knowledgeable on the subject, I think.

THE WITNESS: I can guarantee that.

MR. THOMPSON: No reflection on you, Mr. Murphy.

THE WITNESS: In general the people that are on probation are the ones that are insufficiently trained to get off of probation on to a regular assignment.

Q These are the hourly people?

A The new hourly people that are -- I think it's called "probation," and this is a training period so that they can qualify for their jobs.

Q Mr. Murphy, in your hourly classification, do you have only one job description?

A No.

Q Or a number of them?

A A terrific number.

Q Who would have that information?

A Personnel Department.

Q The Personnel Department?

A Yes.

Q I believe you said that you don't know what the classifications are in the various divisions of the company or subsidiaries.

A I haven't got that good a memory. There are hundreds and hundreds.

Q As to the Campbell Soup Company, New Jersey, do you have any idea of the percentage of people who are paid on an hourly basis?

A The majority of the employees.

Q Do you know as to the Sumter Plant how many people are paid on the hourly basis?

A I would assume the majority of the employees.

Q I believe you have already stated that there are no minimum qualifications for hiring placed on any position in the company except to get the best person; is that right?

A Yes.

MR. THOMPSON: I believe he stated that as far as direction, it came from the Board of Directors or from him. No specific job specifications or minimum job standards for hiring; that that was a matter for the Personnel Department.

If you are going to restate his testimony, you should restate it properly.

MR. FINNEY: I believe he has a right to restate it.

Q Does anyone have the right to change your qualifications without notification to the Board of Directors?

A They don't have that right.

Q Thank you.

A It is not the Board of Directors.

I stipulated the requirement to hire the best people that we can get. That's my job as chief executive of this company. It's the job of the Personnel Department to implement that.

Q Do you have any idea of the breakdown at the plant of employees regarding racial lines?

MR. THOMPSON: I want to restate my objection. That is in several of these questions that you ask in the interrogatories, and I will just restate the same objection.

MR. FINNEY: All right.

Q Has the Personnel Department, Mr. Murphy, ever reported to you as to qualifications implemented in Sumter?

A The qualifications what?

Q Implementation in Sumter. How they implemented the qualifications for employment in Sumter.

A No. That is not the way a chief executive officer watches the performance.

Q They never informed you that they had an eighth grade education requirement as a minimum education

requirement in Sumter?

A I never heard of that. It seems low.

Q They never informed you that they had any 11 Wonderlic score?

A Not to my recollection. I'm not familiar with the tests that are used.

Q I see.

A I don't know the details of the requirements in achieving the directive that I have given to them.

Q To your knowledge, did your company ever hire a consultant to evaluate the Wonderlic?

A Not to my knowledge.

Q To your knowledge, did your company ever evaluate the Wonderlic on its own?

A Not to my knowledge.

Q To your knowledge, does the company use the Wonderlic in any plant except Sumter?

A I wouldn't know.

Q You do not know?

A No.

Q Have you ever received a report on the outcome of the Wonderlic Test in the Sumter Plant?

A I am just not familiar with the tests, what tests are used or what things are done at Sumter.

MR. FINNEY: Off the record.

(Discussion off the record.)

(Whereupon, a ten-minute recess was taken.)

BY MR. FINNEY:

Q Mr. Murphy, to your knowledge, had a job analysis been made of the Sumter operation?

A Not specifically, to my knowledge. We make job analyses every place we operate.

Q Do you know who has the job analysis for the Sumter Plant?

A Either the plant manager there or the Personnel Department, one or the other, I'm sure, or both.

Q As far as you know, there is no relationship between Campbell Soup or Campbell Soup Sumter Plant and the E.J. Wonderlic Company?

A Not to my knowledge. I don't even know the E.J. Wonderlic Company.

Q Have you ever taken the Wonderlic Test?

A No. I've taken intelligence tests in grade school, high school and college.

Q Mr. Murphy, have you ever been advised of complaints against the use of the eighth grade education requirement, the Wonderlic requirement?

A Have I ever been advised what?

Q By anyone of objections to the use of the eighth grade education, the Wonderlic and the eighth grade requirements at the Sumter Plant?

MR. THOMPSON: I assume you are talking about other than this case and prior thereto?

A No.

MR. FINNEY: Yes.

A No, not other than this lawsuit.

Q It was never brought to your attention, objections to the eighth grade, the Wonderlic, before the lawsuit was instituted?

A Well, I knew of conversations that our Vice President in Personnel was having with a representative of the White House having to do with the Sumter Plant because I got a phone call from -- I have even forgotten his name.

MR. THOMPSON: Just a minute. I think that again relates to the lawsuit which was set in motion by these charges which set in motion the conversation.

Are you talking about other than that?

MR. FINNEY: Off the record.

(Discussion off the record.)

MR. THOMPSON: I propose a stipulation that

the conversation connected with anyone with the federal government with relationship to the lawsuit, whether they took place before or after the filing, since it would have to do with the E.E.O.C. phase of the case --

THE WITNESS: It wasn't a conversation. I turned it over to the Vice President in Personnel because I wasn't competent to talk about it.

MR. THOMPSON: Off the record.

(Discussion off the record.)

Q Mr. Murphy, prior to the filing of charges with the Equal Employment Opportunity Commission which occurred on or about October 4, 1966, had you heard any complaints from the personnel of your company or otherwise concerning the use of the eighth grade education requirement and the Wonderlic at the Sumter Plant?

A No, sir.

MR. FINNEY: All right, that's all I have.

Do you have any questions?

MR. THOMPSON: No questions.

- - - - -

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF SOUTH CAROLINA

COLUMBIA DIVISION

[redacted], PLAINTIFFS,	) CIVIL ACTION NO. 67-307
vs	)
[redacted], DEFENDANTS.	)

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF SOUTH CAROLINA

COLUMBIA DIVISION

IDELL D. KINGWOOD, SALLIE BURGESS, SILAS WALKER, ANNIE MAE GOING, MARGRRET ELIZABETH WRIGHT, PARALEE MCDOWELL, CATHERINE PRESTON, CARRIE MAE DANEY, ETHEL MAE BURGESS, MABELL WILLIAMS, VIRGINA BURGESS, JAMES F. PARHAM, IVEY MCDOWELL, JR., GUSSI LEE MICKEL, BEULAH RHODES, HARRIE MAE MCCOY, AND MARY BLANDING,	) CIVIL ACTION NO. 67-187.
PLAINTIFFS,	)
VS	)DEPOSITIONS
CAMPBELL SOUP COMPANY, INC., A NEW JERSEY CORPORATION, AND CAMPBELL SOUP COMPANY (SUMTER PLANT) INC., A SOUTH CAROLINA CORPORATION,	)
DEFENDANTS.	)

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

I, LUTHER B. WIMBERLY, Official Court Reporter of the Third Judicial Circuit of the State of South Carolina, and a Notary Public, State of South Carolina,

DO HEREBY CERTIFY THAT THE HERETO ATTACHED DEPOSITIONS WERE taken before me beginning on the 18th day of July, 1967, and ending on the 21st day of July, 1967, at the Sumter County Courthouse, Sumter, S. C.; that I administered unto said deponents their oaths to testify to the truth, the whole truth, and norhing but the truth, so help them God; that

they were then and there examined and testified as is hereinafter set forth; that I reported said examination and testimony by Stenotype and Dictaphone, and that the attached transcript of deposition is a true and correct transcription of my said Stenotype notes and Dictaphone belts.

I FURTHER CERTIFY that I am neither employed by or related to any of the parties or counsel in said cause, nor financially interested in the results thereof.

GIVEN UNDER MY HAND AND LEGAL SEAL at Sumter Couty Carolina, this 24 day of August, 1967.

Luther B. Wimberly

(SGD) Luther B. Wimberly.
NOTARY PUBLIC FOR SOUTH CAROLINA.

MY COMMISSION EXPIRES AT THE PLEASURE OF THE GOVERNOR.

L. B. WIMBERLY
COURT REPORTER
THIRD JUDICIAL CIRCUIT
SUMTER, S. C.

L. B. WIMBERLY
COURT REPORTER
THIRD JUDICIAL CIRCUIT
SUMTER, S. C.

A P P E A R A N C E S

FOR THE PLAINTIFFS:

ERNEST A. FINNEY, JR., ESQ., SUMTER, S. C.

CARL RACHLIN, ESQ., 150 NASSAU STREET, NEW YORK CITY.

FOR THE DEFENDANTS:

HOMER L. DEAKINS, JR., OF THE FIRM OF THOMPSON, OGLETREE AND HAYNSWORTH, GREENVILLE, SOUTH CAROLINA.

S T I P U L A T I O N S

It is stipulated by and between counsel that the reading and signing of the depositions are waived.

No other stipulations.

MRS. IDELL D. KINGWOOD

was duly sworn and testified as follows:

EXAMINATION BY MR. DEAKINS

Q Will you state your name please?

A Idell Kingwood.

Q Are you the Idell D. Kingwood ---

A Idell P. Kingwood.

Q Are you the Idell P. Kingwood, one of the plaintiss named in the suit ggainst Campbell Soup Company, known as suit number 67-187?

A I am.

Q Where were you born?

A South Carolina, Sumter County.

Q Have you lived in Sumter all of your life?

A No.

Mr. Rachlin: We object to that, as being irrelevant.

Q (By Mr. Deakins) Have you lived in Sumter all of your life?

A I was born here but I was resident in other places. That is my birth here.

Q Where else have you lived besides Sumter?

Mr. Rachlin: Objection.

A New York City.

Q All right, during what period of time did you live in New York?

Mr. Rachlin: Same objection.

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A I ,ived in New York, well I can't tell the exact day, but to my knowledge, up until last year, off and on.

Mr. Rachlin: Excuse me please. I think very frankly we are wasting a lot of time unnecessarily. I would like to get a ruling on these questions right now, there is no substance to these questions.

Mr. Deakins: We think it is relevant to show how long she has lived in Sumter, we can take it up with the Judge on the objection and you can note your objection at any time.

Q (By Mr. Deakins) How long have you been back in Sumter?

Mr. Rachlin: Same objection.

A Since April, 1966.

Q Since you have been back in Sumter, where you, have you been employed?

Mr. Rachlin: Objection.

A No place.

Q You have no employment whatever?

A None whatever.

Q All fight, have you ever filed any application for employment with Campbell Soup Company, Sumter plant?

A Would you repeat that?

Q Have you ever filed an application for employment with Campbell Soup Company at its Sumter plant?

A Yes, I have.

Q Do you recall how many applications you filed?

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A Two.

Q You filed two applications?

A Yes.

Q Were both of those applications in writing?

A Writing, yes.

Q In other words you filed two separate written documents with the company, is that correct?

A Right.

Q All right, give us your recollection as to when you filed the first one.

A I filed the first application at the employment agency, then they sent me to Campbell Soup, they said with my experience, may be I would get quicker servied by going to Campbell Soup, so I went there and I filed an application there.

Q All right, is that the second application you filed?

A Right.

Q In other words you filed an application at the South Carolina Employment Security Commission?

A Right.

Q And then another with Campbell Soup Company?

A Yes

Q So you have only filed one application with Campbell Soup Company, is that correct?

A Yes.

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Q You filed one application with the South Carolina Employment Security Commission?

A Yes, for a job.

Q Then you filed an application with Campbell Soup Company?

A Yes.

Q So you just filed one application with Campbell?

A Right.

Q Do you recall when you filed your application with Campbell Soup Company?

A Around or about, it was, within, I can't givke you the exact date but it was in May of 1966.

Q In may of 1966?

A Right.

Q Now before you filed your application with Campbell Soup Company, you had gone to the South Carolina Employment Security Commission, is that correct?

A Before I filed the --

Q Application with Campbell Soup Company.

A Right.

Q All right, did they refer you to Campbell Soup plant?

A Well afterI took the test there, they gave me a test at the State Employment office, I took my hand test there, finger test.

Q Is this the name of that test, the manual dexterity test?

A Yes.

Q~~xxDidxxhexSouthxCaxxmp~~

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Q Did the South Carolina Employment Security Commission advise you you had passed the manual dexterity test?

A Yes. I received a letter the next day.

Q Then did they give you a little card to take to Campbell Soup Company?

A Yes.

Q When you arrived at Campbell Soup Company to file your applicabion, do you recall who you talked with?

A Mr. Partin.

Q Would that be Mr. Wayne Partin, who is in the room?

A Yes.

Q Did you make any request of Mr. Partin when you appeared at the office?

A Well Mr. Partin called the roll that were there and I answered my name.

Q He called the roll?

A Yes.

Q Would that be the people that were out there to apply for jobs?

A We were there to, for the test that afternoon.

Q What test isthat now?

A The Wonderlic test.

Q Did he call the roll to take the Wonderlic test the same time you filed your application?

A Yes.

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Q Now Mrs. Kingwood, I am now addressing myself to the time when you went out and filed an application at the Campbell Soup Company, you recall that occasion?

A I never heard anything from the application I filed with Campbell. I was sent from the Employment agency, if that is what you are referring to.

Q As I understand it, after the employment agency sent you to the plant, when you got there you filed an application for employment?

A When they sent me there and when I was called, then I went to take my test at the Campbell Soup, and I appeared there when the Campbell Soup sent me a notice to come in for the test.

Q Well did you file a written application at Campbell?

A Yes.

Q How did you get that application to them?

A I personally delivered it.

Q That is the occasion I am speaking of now, when you filed that written application out there, did you talk with any representative of the company at that time?

A When I filed the, er, I don't quite follow you there. Because when I, when they sent me from the State employment I took my application there andI passed the, passed it to the desk. They didn't call me right away, it was quite sometime. I went there quite a few times before I was called for a test.

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Q Is it correct to say that when you delivered your application to the Campbell Soup Company, you did not have any discussion with any representative of the company at that time?

A I did.

Q Who did you talk to at that time?

A I think it was a girl in the office.

Q A girl in the office?

A Right.

Q You didn't talk to Mr. Partin?

A No, not at that time.

Q Did you talk to Mr. Gwozdz?

A I don't know them by name.

Q You talked to some girl?

A Yes.

Q What was your discussion with her?

A When I would be called to work, when would I get a chance for the test, when wouldI get the Wonderlic test and called to work.

Q What did she say?

A I wasn't given a test, she said she did not have any opening.

Q All right, so you knew at the time you delivered your application that you had to pass the Wonderlic test before you could be employed?

A No, I didn't. I didn't know until I went out.

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Q Did she say something to you about the Wonderlic test?

A No.

Q How did you know about the Wonderlic test?

A I didn't know until the day I was called to be interviewed.

Q Oh, at the time you filed your application with the company there was no discussion of the Wonderlic test?

A No.

Q The only discussion you had at the time you filed your application was with some girl in the personnel office?

A Right.

Q And she told you at that time they had no opening?

A Right.

Q She did take your application at that time?

A She did.

Q Now at the time you delivered your application, gave it to this girl, is that the first time you talked to anybody about a job?

A Right.

Q The only other people you talked to about a job before that was the South Carolina Employment Security Commission?

A Yes.

Q When you applied at the Commission, did you ask to be referred to Campbell Soup, or any particular employer, or did you just state that you were willing and able to work?

A I asked for a job at Campbell Soup, filed an application

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for Campbell Soup.

Q So when you visited the South Carolina Employment Secutity Commission, you asked to be referred to Campbell Soup?

A Right.

Q And they did so?

A Yes.

Q After they had given you the manual dexterity test?

A Yes.

Q At the time you went to Campbell Soup for the first time and filekd your application, did you give to Campbell soup the, at that time, this introduction card you had received from the South Carolina Employment Security Commission?

A Yes, I did. I passed it there.

Q And you don't know the name of the woman you talked to in there, the personall office?

A I don't know her only by face, not by name.

Q And can you physically describe her for us?

A Yes.

Q Would you do that please?

A Well she is a medium build lady, looked to be in her middle twenties, I don't remember, if I were looking at her direct I could say it was her.

Q Do you recall the color of her hair?

A No, I don't.

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Q Now at that time that she took your application and also took this introduction card from the Employment office, did she interview you at all, ask you any questions about the application or anything else?

A No, none whatever, she didn't.

Q The only discussion you all had at that time was that they just didn't have any opening?

A No opening.

Q Now did you make any statement to her as to what kind of job you were looking for?

A No.

Q Did you tell her at the time that you were looking for just any kind of job?

A Right.

Mr. Deakins: I would like to ask the Reporter to mark this paper as Defendants' Exhibit 1 for identifiation.

(Paper referred to is received at Defendants' Exhibit 1 for identification)

Mr. Deakins: I would like to ask the Reporter to mark this document as Defendants' Exhibit 2 for identification.

(Paper referred to is received as Defendants' Exhibit 2 for identification)

Q (By Mr. Deakins) I would like to show you, Mrs. Kingwood, a document which has been marked for identification as defendants' exhibit 1, and ask you to look at that document

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if you will please.

A That is my application.

Q All right, is this the application, the original of the application that you filed with the Campbell Soup Company?

A I was just looking becauseI told them I filed one at the employment and at Campbell Soup. As I said I filed one at Campbell Soup and one at the employment. I don't know if this is the one for Campbell Soup or the one for the Employment.

Q Do you notice at the top of the application, it says application for employment?

A Yes.

Q And under there it says Campbell Soup Company, Sumter Plant, Inc, does that refresh your recollection as to whether or not that is the application you filed with the company?

A Yes, this is my application, but I wouldn't know if this is the one for the Campbell Soup or the one I filed at the Campbell Soup plant.

Q Now as to the two applications you filed, the first one you filedwith the South Carolina Employment Security Commission?

A Right.

Q Did you leave that one with the people at the South Carolina Employment Security Commission?

A I did.

Q All right, then the other one, you filled out and gave to

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Campbell Soup Company, is that right?

A Right.

Q Now the one you gave to Campbell Soup Company, did you fill it out while you were out there visiting with this lady on this occasion, when you talked to this lady and she said she had no vacancy?

A No, the one that I filled out there, I just leave that one there.

Q But you filled it out while you were there?

A Right.

Q And I ask you, this is one of those two applications, is that right?

A Right.

Q I will ask you to look over that application. You notice that it is a printed form with questions on each side of the page, is that correct?

A Right.

Q All right, are the things that are filled in, those blanks, the printed questions, is that your writing?

A Yes, it is.

Q Allright. Mrs. Kingwood, in looking over that form, are the answers that you placed on that form true and correct to the best of your knowledge?

A Right.

Q All right, now ~~after~~ as to the two applications that you filed,

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were they both filed on the same day?

A No theywere not.

Q How many days apart would they have been?

A I don't remember.

Q Would it have been just a matter of a few days?

A It would have been, in the same month.

Q You filed your application with the Commission first?

A Right.

Q And then within a month of that you filed your application with Campbell Soup Company?

A It could have been a few days.

Q Anywhere from a few days to a month after you filed your application with the Employment office?

A It was within that month, I wouldn't say a month, within it.

Q Do you notice that that application that you have in your hand, which has been identified as Defendants' Exhibit number 1, is dated?

A Yes, that is the 8th month, 17th day.

Q All right, now that would be then August 17th, 1966?

A I just didn't remember, that is what I say, because the two applications was, um ---

Q All right, but it is true that this one is dated the 8th month and 17th day of 1966?

A Yes, that's right.

Q Now would that have been the day that you filed this application?

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A This must be the one I filed at Campbell Soup, because I filed the one at the employment office, was first, that is what I say about the two applications, I wasn't too definite.

Q Then would it be correct to say that you filed this application with Campbell Soup Company on August 17th, 1966, which is the date that appeare on the application?

A It would have to be because I filed the one at the Employment first.

Q Well you dated this application the day you filed it?

A Right.

Q And at that time, was not that the day you recall it being?

A Right.

Q All right, now sometime prior to that, you had filed an application with the South Carolina Employment Security Commission?

A Right.

Q I notice in one blank, to the question position desired, you said no special?

A That's right.

Q In ~~such~~ otherwords you were applying for any job?

A Right.

Q Now you stated to the question pay expected $1.50 per hour, is that correct?

A Right.

Mr. Rachlin: Would you give us the privelege of having a

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copy of that?

Mr. Deakins: Yes, sir, I will be glad to.

Q (By Mr. Deakins) All right now Mrs. Kingwood, after you filed this application for employment on August 17th, 1966, Did you have any later communication with Campbell Soup Company?

A Oh yes.

Q How many occasions?

A Since I filed this application?

Q Yes.

A Quite a few, I can't recall.

Q Could you tell us approximately how many?

A Well I kept going back asking for work.

Q Would you visit the personnel office?

A Right.

Q Did you ever phone out there?

A I never phoned, I went in person.

Q All right. Now I would like to show you another document marked Defendants' Exhibit number 2 for identification, and ask you to look that document over and identify it if you can.

A This is when I received it, when I took my, the finger test, I think, from Campbell oup.

Q Is it correct to say that the people at the South Carolina Employment Security Commission gave you this card, which is identified as Defendants' Exhibit number 2?

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A This card was mailed to me.

Q From the South Carolina Employment Security Commission?

A Right.

Q Did you then deliver that card to Campbell Soup Company, when you filed your application?

A I did.

Q Now going back again Mrs. Kingwood, to the occasion that you visited the personnel office of Campbell Soup Company, after you had filed your application, would you try to think on how many occasions you went out to the personnel office after you filed your application?

A How many occasions?

Q How many times.

A Oh my God, it is so many times I can't remember because, I can't recall.

Q Would it be as many as six times?

A More than that.

Q All right, would it be as many as ten times?

A Somewhere up there, so many I just can't say directly how many.

Q Would these be times when you were just going out there to ask whether or not they had any vacancies?

A Right.

Q Whether or not they had a job for you?

A Yes, for a job.

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Q All right. You never filed any new application?

A No.

Q On these occasions that you would go out to the personnel office to check on your application,who would you talk to?

A Well, some of the times I spoke to Mr.Partin, many times I didn't even get to see Mr. Partin.

Q He would be busy and you would talk with someone else?

A I didn't see anyone, I ---

Q You didn't see ---

A All I could say, I didn't see anyone.

Q All right who would you talk to when you didn't talk to Mr. Partin?

A Well the girl would come to the desk there and say they didn't have any vacancy.

Q How many times would you say you talked to the girl?

A I still don't recall?

A Quite a few times.

Q All right, did you talk to the same girl each time, that you had given your application to, the same woman?

A No, it was not the same, there were two different girles I spoke to.

Q So a few of the times you went to check on your application youtalked to the same woman you gave your application to, and on other occasions you talked to some other woman?

A No, I didn't, I didn't say that.

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Q You never talked to the woman you gave you application to again, to begin with?

A Sometimes she would come to the desk too, but I say each time it was not the same.

Q But sometimes when you went out to check on your application you did talk to this same woman you gave your application to?

A Right.

Q Other times when you went out to check on your application you talked to another woman in the personnel office?

A Right.

Q Now can you, do you know the name of this other woman you talked to?

A No.

Q Can you physicall describe her for us?

A I can.

Q Would you do that?

A She is along the medium built size, she is not as slim as the other girl and looked to be a little older.

Q Would she look to be in the thirties?

A Right.

Q Do you recall the color of her hair?

A No, I can't.

Q Is it correct to say that when you went out and you talked to these two ladies, that you just made statements to them that you were still looking for a job?

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A Right.

Q And what would they say to you?

A No opening.

Q Isithis what they told you every time you went out?

A Right.

Q Did you have any other discussion with those two ladies about anything else, except what we have gne over?

A None whatsoever.

Q All right. Now on other occasions when you went out to the personnel office, you talked to Mr. Partin?

A Right.

Q How many times would you say you talked to Mr. Partin?

A A few times, I can't recall. I can't count exactly how many times but a few times. That is all I can say, quite a few times.

Q Where would your discussions with Mr. Partin be? Would they be just out in the, at the counter area in the personnel office or a private office or where?

A I was called in privately.

Q And what was your discussion with Mr. Partin on each occasion?

A I needed work.

Q What would he say?

A Didn't have anything.

Q Didn't have anything?

A No.

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Q Anything else?

A Well I told him I needed work, so he said he didn't have any opening.

Q Do you recall anything else he said?

A Well there is a lot more he said, that um, they didn't start giving the tests over again.

Q Are these discussions with him after you had taken the Wonderlic test?

A Right.

Q How many discussions did you have with Mr. Partin before you took the Wonderlic test?

A I didn't even see Mr. Partin until after I took the Wonderlic test.

Q You had never had any meeting with Mr. Partin until after you had taken the Wonderlic test?

A No.

Q Were these occasions when you talked to the two ladies out there, were they after you had taken the Wonderlic test?

A Well some of the time was befre, because after I passed that here, I wasn't called, until sometime after.

Q All right, so before you, after you filed your application with the company, but before you took the Wonderlic test you had several discussions with these ladies in the personnel office?

A Asked them when would I be called for the test.

Q But after you filed your application and before you took

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the Wonderlic test, you had never had any discussion with Mr. Partin?

A No.

Q Those discussions were after you had taken the Wonderlic test?

A Right.

Q Other than your discussions with Mr. Partin and these two ladies whom you mentioned in the personnel office, did you have any other discussions with any other representative of Campbell Soup Company?

A No.

Q At any time that you met with Mr. Partin, did he ever make any statement to you to the effect that he believe that it would be futile for you to keep coming back out there? Or it would be useless for you to come back out there?

A Mr. Partin hadn't told me one time to come back. Mr. Partin said they didn't start giving the tests over, and said maybe, the last time I was there Mr. Partin told me maybe I would be called and maybe if he get enough to fill in maybe I would never be called. That was Mr. Partin's words to me.

Q All right, is ir correct to say that when you talked to Mr. Partin, that he told you they weren't giving the test to people again, after they had already had it once?

A That's what he said at the beginning.

Q Have you ever attempted to file any other application for

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employment with Campbell Soup Company, at any time?

A Beg your pardon?

Q Have you ever attempted to file another application with Campbell Soup Company at any time?

A Since this first application?

Q Right.

A No.

Q Have you ever at any time Mrs. Kingwood, ever worked for any plant or company that was engaged in processing poultry?

A I worked for General Foods?

Q Were they engaged in processing poultry?

A No, household, like, as a matter of fact, probably you know how General Foods, it is not based on poultry.

Q What were you doing when you worked for General Foods?

A Well I worked in different departments, like packing, operating, you know, the most things like finger work, like packing and operating, pushing buttons on machines, like that.

Q All right, for how long a period of time did you work for General Foods?

A Seven years.

Q And where was that, was that in New York?

A Hoboken, New Jersey.

Q And when did you leave your employment with General Foods?

A March of 1961.

Q And then I believe you also worked for Colgate Palmolive?

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A General Foods sent me to Palmolive, because their plant moved to Hoboken, from Hoboken to Dover, Delaware, and they recommended me to Colgate.

Q All right, and you went to work for Colgate shortly after you left General Foods?

A Right.

Q Now what kind of work were you doing for Colgate Palmolive?

A Practically the same thing, assembly work, packing and operating.

Q You weren't involved with procedsing poultry in any way?

A No.

Q And approximately how long did you stay with Colgate Palmolive?

A Three years.

Q You left there in the spring of 1966?

A Yes.

Q And shortly after that did you then move back to Sumter?

A Right.

Q What were the circumstances under which you left Colgate?

A Because of my elderly parents and I had to be near them and I came home.

Q You voluntarily quit your job and came home?

A Right.

Q Have you ever had any relatives who worked for Campbell?

A No, never.

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Q Any of your good friends work out there?

Mr. Rachlin: Object to the question, as being irrelevant.

A Yes.

Q (By Mr. Deakins) All right, do you have a number of friends that work out there?

Mr. Rachlin: Same objection.

A Quite a few.

Q Could you tell me approximately how many?

Mr. Rachlin: Same objection.

A I have, well, I mean, people who I know and associate with, you know, I wouldn't say they are personal friends.

Q Approximately how many of those types of acquaintances do you have working out there?

Mr. Rachlin: Objection.

A I Heard that they were ~~xxxxx~~ some of them work out there, I couldn't say definite, because I have not seen them. I heard that.

Q Could you tell me approximately how many?

A No, I can't.

Q You do have some friends though, that work at Campbell Soup Company in Sumter, South Carolina?

A Right.

Q Can you tell me what race they are?

A Colored.

Q But you don't remember approximatelyh ow many there are?

A No, I don't.

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Q Do you recall when any of these people were hired by Campbell Soup Company?

Mr. Rachlin: Objection, calling for hearsay.

A Well I have a friend who was called there last June when they first opened.

Q Do you know that or your own personal knowledge?

A Sure, as a matter of fact she was a distant relative.

Q So you do have relatives working out there?

A Distant relative.

Q And she went to work for Campbell Soup Companh at the Sumter plant in June of 1966?

A Right.

Q Do you know whether or not she is still working out there?

A She is still there.

Q Is it a he or a she?

A She.

Q Would you tell us her name please?

Mr. Finney: We object on the grounds of irrelevancy, and not necessary to the proceedings here.

A Flossie Benjamin.

Q (By Mr. Deakins) Do you know what job she was in When whe was hired?

A Matron.

Q Do you know what job she is in now?

A Matron.

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Q Same job?

A Yes.

Q Do you know whether or not she has received any wage increase?

A I do not.

Mr. Rachlin: I object strongly to this question, as being impertinent, as a matter of fact.

Q (By Mr. Deakins) Mrs. Kingwood, have you ever at any time been arrested?

Mr. Rachlin: Objection.

A No, never.

Q And that is the way you answered that question on your application, that you filed with Campbell Soup Company?

A That's right.

Q So that is a correct answer?

A Right.

Mr. Rachlin: I might remind counsel that this is a deposition and not cross examination, and is improper on the ground that it is cross examination.

Q (By Mr. Deakins) Now Mrs. Kingwood, just going back to this application form for a moment, identified as Defendants' Exhibit 1, on the reverse side of that document, where it is printed signature, and has a blank space, and written in Idell P. Kingsood, is that your signature?

A Right.

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Q Did you sign the application after you had filled it out?
A I did.
Q You will notice again in looking at the first page, or the front side of the application form, over on the lefthand corner is written the word "good". Did you write that in there?
A No.
Q You will notice on the righthand side of the front of the application, there is some writing there where the Court Reporter has just put on, that is not your writing either?
A No.
Q Other than that is all the writing that appears on this application, front and back side, your writing?
A That is my writing.
Q All of it?
A All but the printing is mine.
Q Do you know who administered this manual dexterity test to you at the South Carolina Employment Security Commission?
A I don't know.
Q Was it someone who worked for the South Carolina Employment Security Commission that administered it?
A All I know they give me the test, but I imagine he might have worked there if he gave me the test.
Q Do you know whether or not there was anyone, any representative of the Campbell Soup Company present at the time you took

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the manual dexterity test?

Mr. Rachlin: I object, irrelevant.

A Was present?

Q Yes.

A Well I see quite a few of them there since I was back there, but not in the room, direct room where I took the first test.

Q Are these, who is it that you have seen down there sometimes? These are not representatives of the company, are they?

A Mrs. Baker.

Q Where does she work?

A Well she work in the office there.

Q But there wasn t any representative of the company present when you took the manual dexterity test?

A I wouldn't know.

Q Well how many, were you in a private room when you took the manual dexterity test?

A Well to begin with they took us in a back room, and then they brought us out where we sit around a table. We stand at the beginning, and when we came out we found a table somehhing like this table, so we sit and we used the little washers.

Q All right, so , in other words you took these tests at the Employment office with a group of other people?

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A Right.

Q Other than the people who were taking the same test you were taking, was there only one other person giving the instructions about the test?

A There was a young man there.

Q Do you have any knowledge to lead you to believe he was employed by Campbell Soup Company?

Mr. Rinney: Objection, she has answered the question, she didn't know.

A I don't know.

Q (By Mr. Deakins) But from the outward appearances he appeared to be working for the Campbell, I mean the Commission?

Mr. Finney: Objection, calling for a conclusion.

A I don't know.

Q (By Mr. Deakins) Have you ever seen this man that was administering this manual dexterity test at the Campbell Soup Company? a

Mr. Rachlin: Same objection.

A No.

Q (By Mr. Deakins) Do you recall approximately how many people were taking the manual dexterity test in the office at the same time you were?

A No, I don't know. All I know it was quite a few.

Mr. Rachlin: Same objection.

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Q (By Mr. Deakins) And this test involved what, tell us basically what was involved.

Mr. Rachlin: That question is objectionable on the ground that there was no question she passed the test, and the company has not raised that question, and asking her to describe the test, you are asking her to exhibit a professional skill with regard to tests that counsel has not qualified her to describe.

Q (By Mr. Deakins) All right, what was involved in the manual dexterity test?

A It was like little washers, how fast you could move your fingers, takeing little washers off and putting them on bolts, and sticking them back in little holes.

Q All right, and then you had something that had to do with pegs?

A Right, taking the pegs from the top of the board, putting them, bringing them over to the first edge and take them out and replace them again.

Q All right, were you given a certain length of time to do this?

A Right.

Q And were you, were all of these people taking this same test at the same time?

A Yes.

Q Were you all together?

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A Right.

Q And after you had taken the test, the next day you received a letter from the Employment office saying you had passed the test?

A Yes.

Q And did they also give you a finger print test?

A No.

Q This is all the test you had at the employment office?

A Right. You mean a finger test or a finger print?

Q Finger print.

A No.

Q How old are you at the present time?

A Now?

Q Yes.

A I am forty-eight now.

Q All right, and what is your date of birth?

A May 12th, 1919.

Q Now Mrs. Kingwood were you at any time ever asked to take the Wonderlick test at the Campbell Soup plant?

A I beg your pardon?

Q Were you ever at any time asked to take the Wonderlick test at Campbell Soup?

A Were I ever asked?

Q Have you ever been asked to take the Wonderlick test, at Campbell?

A Well I received a telephone call to come in and take this

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test, and I went out.

Q Do you recall approximately when that was?

A I received a call that morning to be there six o'clock that evening.

Q And do you recall about when that was, what mongh?

A It was in September, around or about the 19th of September, 1966.

Q All right, so it would have been within a month after you filed your application with Campbell Soup Company?

Mr. Rachlin: Objection, this is cross examination, the application speaks for itself and the date speaks for itself.

Mr. Deakins: I will strike the question.

Q (By Mr. Deakins) Who were you notified by to come out and take the test? You know who you were talking with on the telehpome at the time?

A I used my nearest friend's phone, I received a telephone call at the friend's house and they brought me the message. I didn't have a telephone at the time.

Q So you didn't have any direct discussion with anyone, you got the message from a friend?

A Yes.

Q And did you in fact go out to the plant that afternoon and take the test?

A I did.

Q With whom did you talk at that time, when you got to the

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plant?

A I wasn't speaking with anyone until we were called to go up for the test. We went in and I was seated.

Q Where did you take the test?

A It was upstairs in the plant.

Q In the conference room?

A I imagine so, something like that, with a table.

Q All right, who gave you the test: Who administered the test?

A Mr. Partin.

Q At the time you took the test were there other people taking the test at the same time?

A Yes.

Q Do you recall approximately how many people were taking the test?

A I don't know, quite a few.

Q Would there have been as many as twelve?

A Could have been, could have been more or less, I didn't count them.

Q Quite a few people taking it?

A Right.

Q Did you all take the test at the same time?

A Right.

Mr. Rachlin: Objection. Calls for a conclusion.

Q (By Mr. Deakins) Were there other people, when you took the test were there other people in the same room with you

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taking the test?

Mr. Rachlin: Objection, she couldn't possibly know what they were doing. And the entire question is irrelevant, as to whether anybody else was taking the test or not.

Q (By Mr. Deakins) Before you began taking the test did Mr. Partin give you all some instructions about how to take the test?

A I don't remember.

Q Well do you recall he said anything before he gave you the test?

A Well I, he said something, but I don't remember all what he said.

Q Was he talking about the test?

A It was concerning the test.

Q Was he telling you how the test worked?

A Yes, it was something concerning the test, but I don't remember.

Q Can you recall that he was reading something?

A I don't remember.

Q But when Mr. Partin was talking about the test before you all actually started all of you were in the room at the time?

A All I can give an account is xx where I was. All who took the test along with me, we all was sitting down but now --

Q When Mr. Partin was telling you about the test?

A Yes.

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Q And then did Mr. Partin hand out some test forms to you?
A No, they were lying on the table, face down, and we all picked up out tests and, every seat at the table.
Q Now were you given a certain amount of time within which to complete the test?
A Yes.
Q Did you at any time either before or during the test, ask Mr. Partin any questions about the test?
A No.
Q Once he told you you could begin the test, then you just began the test?
A Yes.
Q And you worked on it until he told you to stop?
A Until the clock went off.
Q In other words was the test timed by a clock?
A Right.
Q Was that some buzzer on it ot ---
A It had a buzzer on it.
Q And when the buzzer went off you stopped?
A That's right.
Q Did you notice whether the other people who were taking the test stopped?
Mr. Rachlin: Objection.
A I didn't notice.
Q (By Mr. Deakins) Now after you completed the test and the buzzer went off, did you thrn turn in the test to Mr. Partin?

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A Mr. Partin called us in one by one in a private room.

Q All right, and he called you in privately?

A Right.

Q And what did he tell you in this private conference?

A Said I didnpt pass the test.

Q All right, did he have your test form there in front of you?

A Yes.

Q Did he go over your form with you, show you what questions you had missed?

A Well he just told me, he didn't take me over anything, like word for word, he just told me I didn't pass the test.

Q Well when he was telling you you didn't pass the test, did he show you any part of the test form you had used?

A No, he didn't tell me anything.

Q Did he tell you what score you had made?

A Yes, he said I had four right, four correct.

Q Did he tell you what score you had to make in order to pass the test?

A I don't remember, I, I don't remember.

Q What else was said during the meeting with Mr. Partin, this private meeting.

A In his room?

Q Right.

A Well Mr. Partin said to me, what happened, you application shows here that you worked for General Foods and you worked

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for Colgate, I said yes, Mr. Partin, but um, I said so far as experience, I have that, I says so far as my fingers, such a test, I never had to tkae such a test as this, not for a job. And he said well, that is what the company, that is the company's rule. And so he said, I would prefer you to go elsewhere, and he directed me to Pettibelle, he sais you don't have to take tests there, you should go there and look for work.

Q Was that another ~~xiy~~ company around the Sumter area?

A Yes, right down across the railroad tracks here.

Mr. Deakins: I would like to havethe Reporter mark this document as Defendants' Exhibit 3 for identification.

(Document referred to is received as Defendants' Exhibit 3 for identification)

Q (By Mr. Deakins) Mrs. Kingwood, I would like to show you a document which has been marked defendants' exhibit number 3 for identification, and ask you to look at that document. Have you had an opportunity to look over that exhibit?

A The first page, I looked at.

Q Look at all of it please.

A That is the test.

Q That is the test you took, which we have been referring to as the Wonderlick test?

A Yes.

Q That is the one Mr. Partin gave you along with the others?

A Right.

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Q Now Mrs. Kingwood, you will notice on the first page of this test, that is under the category name, Idell P. Kingwood, is that your writing?

A Right.

Q All right, and on the date, that is September 19th, 1966, is that your writing?

A Yes.

Q Is that the correct date you took the test?

A I said around about September.

Q Is that the correct date there?

A That's my writing, I stated it was around about that date.

Q Now you will notice Mrs. Kingwood, on the inside of the test, on page 2, certain of the answers and spaces have been filled in with numbers, is that correct?

A You mean ---

Q On page 2, which is on the left side here.

A Yes.

Q Certain of the blanks by the questions have been filled in with numbers?

A Yes.

Q Now are the numbers that are filled in there the numbers that you put on the test, to answer the questions?

A Beg your pardon, you mean like this, the numbers there ---

Q The numbers that are written down the righthand column on page 2, are those numbers your writing?

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A Yes.

Q And I believe on question number 4, in the blank, there is the word "yes" written.

A Yes.

Q Is that also your writing?

A Right

Q All right, now just on the other side of those numbers there are some check marks and some X's, is that correct?

A Right.

Q That is not your writing, is it?

A No.

Q When you had this private conference with Mr. Partin, did he show you the X's and check marks on the tab?

Mr. Rachlin: She has already answered that question.

A No, Mr. Partin just told me I only had four correct, he didn't show me anything.

Q Do you have any different recollection today of your filling out this form any differently than it is filled out right now?

A Did I what?

Q Do you claim at this time that any of the numbers on page 2 are any different from the numbers you put in at the time you took the test?

A No.

Q And I notice that beginning on question 15 through question

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through question 50, that the answers are not filled in, is that correct?

A Right.

Q Was it just a matter that you didn't have time to fill in the rest of them?

A I wasn't aware of that test, I didn't even know I had to take that test. I was absolutely shocked when I went up there and saw a test like that. All I thought I had to do was to take my physical. I didn't know I went up there for a test.

Q All right, when you got there they told you you had to take this Wonderlick test?

A That's right.

Q Did you express any objection?

A No, I didn't, I explained to Mr. Partin, I just said I didn't know we had to take a test, I didn't know I was required to take the test.

Q Did you explain to Mr. Partin, about being upset about anything.

A Well I told Mr. Partin, I had experience, I had plenty of that, but I never worked in a place where you had to take this, and that was all I thought that was necessary.

Q Was there anything wrong with you on that particular day that you took the test, which you feel kept you from doing your very best on the test?

A Sure, because first when I went I was just lookigg to go

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through my physical to get a job. I was quite upset when I saw that.

Q Weren't you upset because you had run over a dog coming down, or something?

A No, I didn't run over any dog, I never even killed nothing. I never killed anything for a mosquito, that is all I ever hurt.

Q All right, can you think of anything else that was said during your meeting, your private meeting with Mr. Partin, after you had taken this test?

A That very day, that is what you are referring to?

Q No, that very meeting.

A When I took this test?

Q No, after you took the test, Mr. Partin called you into a private room, and told you you had only scored four, got four of these answers right?

A Yes.

Q Do you recall anything else that you and Mr. Partin talked about during that meeting?

A Only that I was very upset that day when I found out, when that met me there, it was as much as I could do to get down the steps and get out of there.

Q So your discussion with Mr.Partin was very short?

A Yes.

Q You can't recall anything else that was said?

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A No.

Q Before you took this Wonderlic test, that night, had you ever on any earlier occasion received any instructions from anyone as to how to take the Wonderlick test?

A No, no, never, I never saw that test until I went there.

Q You had never taken one before anywhere?

A Never.

Q At the time you applied for employment with any other company, have you ever taken a Wonderlick test?

Mr. Rachlin: Objection, irrelevant.

A No.

Q Now Mrs. Kingwood, how many years of schooling have you had?

A Tenth grade.

Q All right, and where did you go to school, was that here in Sumter?

A Mayesville Institute.

Q Where is that?

A In Mayesville, South Carolina.

Q And you went through the tenth grade?

A Well I didn't finish the term out, I went as far as the tenth but I didn't finish out the term.

Q But you had begun the tenth grade and didn't finish it?

A No.

Q In all of your earlier grades, first through ninth, did

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you make passing grades, in all of those grades, and were promoted?

A No, because when I was going to school we didn't get enough time in school to pass one --

Q Pardon?

A When I was going to school we didn't get enough time in school to make a grade a year. Sometimes I spent two years in school.

Q You mean sometimes you spent two years in the same grade?

A That's right. Because Ididn't have enough time in school.

Q But you reached the level of the tenth grade.

A Right.

Q How many actual years had you been to school, I guess more than ten?

A I can't remember, because I was in school so long.

Q But there were some grades that you were in for more than one year?

A Yes.

Q And this was caused by the fact you didn't pass that grade and had to take that grade over again?

A I didn't have the privelege in school, the school term wasn't long enough.

Q Do you have any recollection as to how many of these grades you had to go through twice?

Mr. Rachlin: This is irrelevant.

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A No, I don't remember, some of it was back in elementary.

Q All of your schooling was in the public schools, is that correct?

A Right.

Q In the public schools, did you have written tests?

Given to you, of various kinds?

A Only when we have examinations or something like that.

Q You took written examinations in school, didn't you?

A Yes.

Q All right, did you take normal courses that they offered, all the way through school?

A No, I didn't.

Q Did you have any arithmatic courses?

A Well, no more than just my regular, um, mathematics.

Q Well wasn't that a regular course that you took in public school?

A A regular course, you mean taking up a special, you mean --

Q Isn't arithmatic one of the regular courses you have in public schools?

A Yes, that's what I thought you meant.

Q Of course you can read, can't you? You can sit down and read a book?

A Yes, some thinggs, some things I read, a lot of things you read you don't understand it, but I can read.

Q When you took this personnel test, this Wonderlic test at Campbell Soup Company, could you read the questions?

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A Well, yes, I read the questions, sure I read the questions.

Q Were you ever given any physical examination by the Campbell Soup Company?

A No.

Q Never at any time?

A No.

Q All right, have you ever received any disability payments of any kind for any injuries?

Mr. Rachlin: Objection.

A No.

Q Getting injured on the job and received insurance payments for it?

A No.

Q Have you ever filed any lawsuits growing out of any injuries you sustained?

Mr. Rachlin: Objection. Irrelevant.

A No.

Q Mr. Deakins: I will ask the Reporter to mark this document for identification as defendants' exhibit number 4.

(Document referred to is received as Defendants' Exhibit 4 for identification)

Q (By Mr. Deakins) Mrs. Kingwood, I would like to show you a document which has been marked as Defendants' Exhibit 4 for identification, and ask you to look that document over. Can you identify that document?

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A Yes.

Q What is it?

Mr. Finney: The document speaks for itself, we object.

Q (By Mr. Deakins) Does your signature appear on that document?

A Yes.

Q Do you know, down the righthand column where it says "sign here", and says "Idell P. Kingwood", is that your signature?

A Yes.

Q Is this the document you filed with the Equal Employment Opportunity Commission?

A Yes.

Q Now I notice that this is captioned at the top "Charge of Discrimination".

A Yes.

Q And what is the date of that, you see in the lefhhand column, down near the bottom where it says date, it is written in January 10th, 1967?

A Yes.

Q Is that the date that you filed that with the Equal Employment Opportunity Commission?

A Well just, I just, out of my head I can't, but it was around about thattime, as stated in here.

Q All right, are the words "January 10, 1967", which appear

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on this exhibit, is that your handwriting?

A No, that is not my handwriting, that doesn't look like my handwriting.

Q Can you say whether or not that that date was filled in in your presence?

A Yes.

Q Is that the correct date that you filed this charge?

A It was around about, around that time.

Q All right. Now at any time before you filed this charge, which has been identified as defendants' exhibit 4 for identification, have you filed any other charge with the Equal Employment Opportunity Commission against Campbell Soup Company?

A I don't remember.

Q Do you recall if at any time after you filed this charge, defendants' Exhibit number 4, you ever filed any other charge against Campbell Sopp Company?

A I don't remember.

Q To your knowledge then this is the only charge you ever filed against Campbell Soup Company?

A As far as I can remember, I said, that is not definite, I don't remember, but as far as I can remember.

Q All right, how did you go about filing this charge? Did you file it here in Sumter or in Atlanta?

A Here in Sumter.

Q All right, at the time you filed this charge did you have

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any discussion with any Government representative?

A No, I don't remember.

Q Who filled in the charge, who filled in all the language that is put in on the form?

A I don't - oh, it was my um, as far as I see, that was my request there ---

Q Pardon?

A It was my request there as far as I could see there, what is down there.

Q Do you see where it says on here, it is printed, explain what unfair thing was done to you?

A That's right.

Q And then there is type in there a sentence?

A Right.

Q Who typed that in?

A I don't know.

Q Was it typed in your presence?

A I still don't recall that.

Q Did you type it in personally?

A No, I didn't.

Q Well all of the typing on this exhibit, was it typed in before you signed your signature to it?

A Typed in before?

Q Yes.

A Oh yes, sure.

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Q But you don't know who typed it in?

A I don't, I don't remember.

Q Were you interviewed by anyone before this form was typed up?

A I still don't remember.

Q Do you recall who asked you to sign this form, defendants exhibit number4?

A No, no one asked me, that was my um, that was my complaint there, whatever is there.

Q Who handed it to you to be signed?

A I still don't remember.

Q You don't have any recollection?

A No.

Q Was it someone with the Government?

A No, I still don't remember.

Q You see the signature in the far lefthand corner of this exhibit, Charles F. Wilson?

A Oh, the Equal er, employment opportunity, now I think I remember, Equal Employment Opportunity.

Q Did you ever meet Mr. Charles F. Wilson?

A Yes, I have.

Q All right, is he the man who gave you this form to sign?

A That's right, I remember now.

Q Was that here in Sumter?

A Here in Sumter, right.

Q All right, how did it come about that he filled out this

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form for you to sign?

A Because, um, when you go to someone for help and you explain your situation to them, and then, er, as far as I know that is how it went about. I give him my complaint.

Q All right, so you then had a discussion with Mr. Wilson, where you told him about how you had applied for employment with this company?

A Yes.

Q And then he filled out this form, which is Defendants' Exhibit 4?

A Right.

Q And you signed it?

A Right.

Q Do you recall where you were here in Sumter when you signed this form?

Mr. Rachin: I object, irrelevant.

A It was at a meeting, but just where it was I don't remember.

Q What meeting was that?

A I just don't remember.

Q Do you recall that you signed Defendants' Exhibit 4 at a meeting?

A Yes.

Q What group was this that was meeting?

Mr. Finney: Objection, irrelevant.

A We were complaining.

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Q Against Campbell Soup?

A Right.

Q So there were a group of you there who were all complaining against Campbell Soup?

A Right.

Q Do you recall whether or not anyone else besides yourself signed one of these charges that night?

Mr. Finney: Objection, irrelevant.

A I don't know, because I, I didn't, I don't remember. All I know I signed it.

Q Where was this meeting held?

Mr. Finney: She has answered that question and we object to it.

Q (By Mr. Deakins) Where was the meeting held?

A I don't remember.

Q Do you recall if Mr. Charles F. Wilson, from the Equal Employment Opportunity Commission was present at the meeting?

A Yes.

Q Do you know whether or not any other Government representatives were present there?

A I don't know.

Q Was Mr. Wilson present through the entire meeting?

A As far as I can recall.

Q All right, and there were a number of other people there besides you and Mr. Wilson?

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A Yes.

Q Approximately how many?

A I don't know, I didn't count them.

Q Can you recall the names of any of those people who were there?

A No.

Mr. Rachlin: Objection, irrelevant.

Q (By Mr. Deakins) None of them?

A No, because I didn't know them by name at the time. I still don't.

Q All right, were, was Reverend Lewis there?

Mr. Rachlin: Objection?

A I don't think he was. Icould be wrong, I don't remember seeing him.

Q Do you recall anyone being at the meeting besides you and Mr. Wilson and some other people who had some complaints against Campbell Soup Company? Was anybody else there?

A Oh sure.

Q Who?

A I don't remember. I don't remember whether these faces or other faces, because I wasn't familiar with all the people.

Q So the only one you know that was there by name was Mr. Wilson and a number ofother people?

A Right.

Q Tell me wnat transpired at this meeting.

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Mr. Rachlin: Objection.

A Beg pardon?

Q (By Mr. Deakins) What happened at this meeting?

A Well all I know that we made our complaints because we feel that we wasn't getting fair treatment with Campbell Soup. We know that we wasn't.

Q Did you talk with Mr. Wilson, this Government man, in private?

A Yes.

Q Did some of the other people there talk with him in private?

A I don't know that.

Q Other than your private meeting with Mr. Wilson, did you all have any public meeting among all of you, where you were all talking?

A Yes.

Mr. Rachlin: Objection.

Q (By Mr. Deakins) Did you participate in the public part of the meeting?

A Yes.

Mr. Rachlin: Objection.

Q (By Mr. Deakins) What did you say during the public part of the meeting?

Mr. Rachlin: Objection.

Mr. Finney: May I say right here for the record, I think we ought to object to this entire line of questioning, the

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basis of the objection being that there is no relevancy, between any meeting and the complaint here. There is no allegation either in the plaintiffs' complaint or the defendants' answer, which would make such questions pertinent to the issues here involved and we object to any questions regarding the meeting, unless they are connected in some way with the complaint or the answer.

Mr. Rachlin: As a matter of fact I want to go further. I would like to suspend the hearing right now and bring the matter before the Federal Judge, and see whether you have a right to ask these questions. And I ask the hearing be suspended and we find out whatever the Judge will rule on it. I suggest that we have a meeting to day to settle this matter. Under the Federal rules as I understand them, you cannot ask questions which are merely irrelevant. You are asking questions which are part of a, some idea that you seem to have ---

Mr. Deakins: I am asking questions which are relating to the discovery of relevant facts.

Mr. Rachlin: I doubt that very much, it has nothing to do with the relevancy and I suggest we suspend and have the Judge rule on them.

Mr. Finney: I suggest we have a ten minute recess.

AFTER RECESS

Mr. Finney: At this point we would like to state for the

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record that we would request the witness not to answer the question which was asked just before the recess, and allow the matter to be resolved by the Judge who will hear the entire matter.

Mr. Deakins:

It would be my suggestion that as to this type of question where the witness is so instructed not to answer, after the completion ofthe depositions that we take these up with the Judge.

Mr. Finney: That will be fine.

Q (By Mr. Deakins) Now Mrs. Kingwood, do you of your own personal knowledge know the names of any white persons who have been employed or hired by Campbell Soup since the time you have filed your application?

A No, I don't.

Q Do you know the names of any persons, either negro or white, that have been hired by Campbell Soup since you filed your application?

A Yes, I do know some.

Q All right, are the names that you know of people who have been hired since you filed your application negroes?

A Yes.

Q Can you tell me how many negroes that you have, that you know, have been hired by Campbell Soup since you filed your application. How many of them?

Mr. Rachlin: This question is irrelevant.

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A Well, I can't say the exact amount, no, I can't.

Q (By Mr. Deakins) Can you give me your best recollection?

A I know a few. As far as I know, it wasn't a lot.

Q Now after you took the Wonderlic test, personnel test, in September of 1966, you had several discussions with Mr. Wayne Partin after that?

A I did.

Q And can you tell us how many of those discussions you had with him?

A I don't know exactly.

Mr. Rachlin: That question was asked and answered several times before,

A I don't remember how many. I know it was quite a few, but the exact, no, I can't say.

Q Tell me what he said in those discussions.

A He said he didn't have any opening.

Q Did he tell you during those discussions that once you had taken the test and flunked it, you couldn't take it again?

A He said he had to go around, he had to take all the applications, people who had the applications, maybe I would be called and maybe I would never be called, that was his words to me.

Q Did he ever tell you that some of the girls were given two weeks time and then given a second test, whereas others were told they had to seek work elsewhere?

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A No, he didn't say that.

Q Did any representative of Campbell Soup Company ever make such a statement?

Mr. Rachlin: Irrelevant. I instruct the witness not to answer that, as being beyond the scope of the entire case.

Mr. Deakins: It happens to relate to statements she made in a letter dated October 3, 1966, in answer to some interrogatories. Is the witness so instructed not to answer it?

Mr. Rachlin: No, I withdraw the instruction.

Q (By Mr. Deakins) Mrs. Kingwood, I may be asking you the same thing again, I am not sure, but it is my understanding -- did you answer the question, did any representative of Campbell Soup Company ever make a statement, that some girls were given two weeks time and then given a second test, whereas others were told they had to seek work elsewhere?

A I answered no.

Q Now it is my understanding that this document which has been marked defendants' exhibit number 4 for identification, is the only charge that you ever filed against Camptell Soup Company with the Equal Employment Opportunity Commission?

A As far as I know, as far as my knowledge goes.

Q And as far as your knowledge is concerned the date that appears on this document, which is January 10th, 1967, is the correct date that you signed this document?

A As far as my knowledge, yes.

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Q Are you aware of any sort of petition that a number of people signed complaining against Campbell Soup Earlier, before you filed this charge? You ever heard anything about that?

A No, I don't know anything about that.

Q Have you ever signed any petition with a number of other people, complaining against Campbell Soup?

Mr. Rachlin: O bjection.

A No, I don't remember doing that.

Q (By Mr. Deakins) Now it states on this charge, which is identified as defendants' exhibit number 4 for idenfification, it is printed on that, for question number 6, the most recent date on which this discrimination took place, and then xxxx someone has filled in May of 1966, is that correct?

Mr. Rachlin: That document speaks for itself.

A I beg your pardon, I didn't follow you there.

Q (By Mr. Deakins) On question number 6 you will notice it is printed, in,the most recent date on which this discrimination took place, and someone wrote in there, May of 1966.

Mr. Rachlin: That is improper, the document speaks for itself.

A Well I just can't say, I know that in 1966, somewhere along there.

Q Well did you write in the words, May, 1966?

A No, that is not my writing, but that was to my knowledge, I guess.

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Q Mr. Wilson wrote that in?

Mr. Rachlin: Only if she knows.

Q (By Mr. Deakins) If you know.

A I just can't say yes, maybe yes.

Q Well was that filled in at that time that you signed your signature to this?

A Right.

Q Did you read that charge over before you signed it?

A Right.

Q All right, and you claim that the statements that are contained in it are true and correct?

A Right.

Q And to the best or your knowledge the most recent date on which you were discriminated against was May, 1966?

Mr. Rachlin: I object, that is cross examination, and the document speaks for itself.

Q (By Mr. Deakins) I am asking the question, don't let me be misunderstood, do you claim that the most recent date --

A I wouldn't say recent date, I know it was in 1966, but the exact date I wouldn't say yes or no. I would say to my knowledge, you know, that is the statement I gave.

Mr. Rachlin: That statement and charge, completely, with the original application, filed with the South Carolina Security Commission, and it speaks for itself and you are now attempting to contradict or cross examine your own document.

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Q (By Mr. Deakins) Do you, in reviewing defendants' exhibit number 4, do you now say that all the statements contained on this exhibit are true and correct?

Mr. Rachlin: I instruct the witness not to answer that question. It has been asked and answered several times, and it is also improper cross examination and I instruct her not to answer.

Q (By Mr. Deakins) Mrs. Kingwood, do you claim that you have been discriminated against by the Campbell Soup Company?

A Yes.

Q Because you have not been hired?

A Right.

Q What do you base that claim on?

A Well I bases it on grade level and the Wonderlic test.

Q Grade level and the Wonderlic test?

A Right.

Q Now as to the grade level, do you know what their grade level requirement is?

A Eighth grade.

Q And now you completed more than the eighth grade?

A Yes.

Q Did anyone at Campbell Soup Company ever tell you that your educational qualifications were not sufficient to be employed?

A No.

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Q In what way do you claim that you have been discriminated against because of the age level that they had out there?

A I beg your pardon, age level?

Q I am sorry, educational level, how do you claim that you have been discriminated against because of the grade level?

A Well because the negro race didn't have the opportunity of getting the amount of education the whites had opportunity of getting, that the white people education is more advanced than the negro, and the majority of the negroes, even the tenth grade wouldn't have no more than about a seven or eighth grade of the white people education, because they didn't have the books.

Q Were the schools that you attended through the tenth grade, were there any white children in those schools?

A No.

Q They were all negro schools?

A Yes.

Q Did anyone with the Campbell Soup Company ever tell you that there was any difference in the educational requirements for negro applicants as distinguished from white applicants, as to how many grades you had to complete?

A I beg your pardon, would you repeat that?

Q Let me re-state the question. Did anyone at Campbell Soup Company ever tell you that you had to attend any different number of years of school, depending on whether

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they were negro schools or white schools?

A No, no one at Campbell Soup told me.

Q Did someone at Campbell tell you that it was a job requirement, or in order to get a job out there, it was necessary to have at least an eighth grade educatio ?

A At the employment agency I was ~~s~~ told.

Q You were never told by any representative of the Campbell Soup Company?

A Now I don't recall, I don't recall, but if I am not mistaken, if I am not mistaken, I think it was, that I had to have an eighth grade education. I am not sure of that.

Q But you were told by someone at the employment office?

A Yes, I was.

Q And you were possibly told at the Campbell Soup Company too?

A But I just don't ~~remeber~~ remember.

Q What were you told at the employment office about the educational requirement?

A Well, that morning we were there, when we filed our applica-t ion and we all passed them in there was quite a few turned down, because some of the applications stated fourth grade, six grade, up to seventh grade, and they didn't accept the applications because they didn't say eighth grade.

Q But they did accept your application?

A Yes.

Q Did whoever was speaking at the employment office say

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that you had to have an eighth grade education to be hired at Campbell Soup Company?

A Yes, they said in the beginning it dien't but now that is what they required.

Q Pardon?

A They said before they didn't, but now that what they had required, from the opening of Campbell Soup they didn't require that but now they did.

Q And this was at the time you filed your application with the employment office?

A Right.

Q And as I understand it you might have been told about the eighth educational requirement by somebody at the company?

A But I don't remember.

Q You don't remember one way or the other?

A No.

Q Has anyone ever told you that there was any different educational requipement other than the ~~t~~ eighth grade educational requipement?

A Anyone ever told me?

Q That there was any other educational requirement, has anybody ever told you that you had to have a tenth grade education to be hired by Campbell Soup Company?

A No, I was told the eighth grade.

Q You never heard any different requirement than the eighth grade?

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A No.

Q All right, and you base your claim of discrimination also on the fact of you being given this Wonderlic test?

A Right.

Q And what do you base that claim on?

A Because some of the questions, some of the question on there, um, are above this eighth grade level.

Q In your opinion?

A Right.

Q They are questions you didn't know the answer to?

A No.

Q Any other reason that you claim the test is discriminatory?

A Well those two, I have, my great belief that it is based upon my race and, race and ---

Q I am sorry I didn't get that.

A I said my belief and my greatest knowledge on that is that it is based on the grade level and my race.

Q What is based on your grade level?

A I mean not, er, being hired at Campbell Soup.

Q Well why do you consider that your race has anything to do with it?

A Because there is more whites hired than colored.

Q There are more white people working there than colored?

A Yes.

Q Is there anything else about the Wonderlic test that

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causes you to think you were discriminated against?

A I think that the Wonderlic test was, er, came in, that is why they brought it in, to eliminate the negroes.

Q How do you know that?

A That is the way I feel about it.

Q This is your personal feeling?

A Well that is how I feel, I may as well tell you.

Q Did anyone at the Campbell Soup Company ever tell you that?

A No, they didn't told me, but there was so many negores that were turned down because of that wonderlic test.

Q Do you know who they are?

A No.

Q Do you know the name of any person who failed the Wonderlic test?

A They failed it while I was there ---

Mr. Rachlin: Objection to ~~xkx~~ that question.

A I don't know their names. I seen them walking out.

Q (By Mr. Deakins) There were other people who took the Wonderlic test at the same time you did that failed the test too?

A At the time I went back there and trying to get the test over again, and they were inside and they took the test while I was there and they went out, they failed the test.

Q When you took the test were all the people who took the test negroes or were some white people?

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A There was one white.

Q Do you know if the white person passed?

A I wouldn't know.

Q Do you know if any of the others passed?

A I met some of the girls, who said they didn't pass. I didn't meet all the girls, but who all passed I don't know.

Q Is there anything else now, on which you base this claim of discrimination other than what you have just told me.

A That is my basis, belief, of the Wonderlic and the grade level.

Q Those are the two main things that make you think you have been discrimincated against?

A Right.

Q All right, Mrs. Kingwood, in any of your discussions with Mr. Partin, have you all ever talked about your race?

A No, I didn't talk to Mr. Partin about my race.

Q Did Mr. Partin every make any remarks to you about your race.

A No, he never have, but he always tell me he didn't have work.

Mr. Deakins: I don't think I have any more questions of this witness at this time, unless something else develpps.

Mr. Rachlin: Does "this time" refer to the answers and, of questions by instruction or do you want to hold the examination open for any other reason?

Mr. Deakins: I would like to leave the examination of this

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witness open, subject to being recalled. As far as I am concerned at this point I am through with this witness. If something else develops on examination of one of these other witnesses, I would probably want her here.

Mr. Rachlin: You don't require her to stay around now?

Mr. Deakins: If she can come back, if she is needed.

Mr. Rachlin: I was just trying to make sure that she will not be considered in contempt for not coming back.

Mr. Deakins: No, sir.

EXAMINATION BY MR. FINNEY

Q Mrs. Kinwood, in regard to this application for employment at Campbell Soup Company, Inc., I want you to look at the very top line and compare those figures on that line with the rest of that application. I ask you if you see any difference between that writing or, or, the date and the social security number, did you put those on there, or do you recall?

A To my knowledge Mr. Finney, it is my writing.

Q That is your writing?

A Yes.

Q I will ask you, about the Campbell Soup Company, this card, identified as defendants' exhibit number 2, the first line of this reads, this applicant is referred to you in response to your request, is that the first line on that card?

A Right.

Q And that card is addressed to you, Mrs. Idell P. Kingwood?

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A Right.

Q Did Mr. Partin, in his conversations with you, ever tell you that you were not employed at Campbell because you failed to pass the Wonderlic test?

A That is what he told me.

Q In looking at the Wonderlic test, do you see any questions on there dealing with poultry work in any way?

A No.

Mr. Deakins: I object to that on the ground the document speaks for itself.

Q (By Mr. Finney) All right. Now you did answer the question, concerning whether Mr. Partin told you why you were not employed at Campbell?

A Because I didn't pass the Wonderlic test.

Mr. Finney: I believe that is all the questions I have.

EXAMINATION BY MR. DEAKINS

Q Mrs. Kingwood, were you ~~we~~ ever told by any representative of Campbell Soup Company that your education had anything to do with not being employed?

A No, no one ever told me direct, no.

Mr. Deakins: No further questions.

RECESS FOR LUNCH. AFTER RECESS

MRS. CARRIE MAE DANEY

was duly sworn and testified as follows:

EXAMINATION BY MR. DEAKINS

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Q Would you state your name please?

A Carrie Mae Daney.

Q Where do you live, Mrs. Daney?

A I live Alcolu, South Carolina.

Q That is around here in the Sumter area?

A Not too far.

Q Is this Mrs. or Miss?

A Mrs.

Q How long have you lived in the Sumter area?

A Well I live here, well every since I was married.

Mr. Finney: I might state right here that we object to all questions regarding the residence and the length of time these people have lived in the county and let that objection run through the testimony.

Mr. Deakins: All right.

Q (By Mr. Deakins) Approximately how long have you been married?

A About thirty years.

Q And you have lived in the Sumter area all during this period of time?

A Yes.

Q Now Mrs. Daney, have you ever applied for a job with Campbell Soup Company? Here in Sumter?

A Yes, sir.

Q Did you file any written application for employment with

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Campbell Soup Company?

A That's right.

Q Do you recall approximately when it was you filed this application?

A Well um, the first blank I fill out was in February, I don't know the date.

Q That would have been February of last year, 1966?

A Yes, sir.

Q Did you file any other application besides that one?

A I fill out one at Campbell Soup Company.

Q Later?

A Later on.

Q Where did you fill out your first application?

A At the, um --

Q Employment Security Commission?

A The employment place, that's right.

Q And you think that was sometime in February of last year?

A Yes, sir.

Q At the time you filled out that application with the Employment Security Commission, were any representatives of Campbell Soup Company present at the time?

A I really don't know about that, if it was.

Q Did you turn in that application to the Employment Security Commission?

A That's right.

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Q And then at some later time you filed an application for employment with the company itself?

A Yes.

Q Now aside from that application for employment that you filed with the company, did you file any other application for employment with the company?

A No more than the one at the Campbell Soup Company.

Q You filed only one application with the company?

A That's right.

Mr. Deakins: I will ask the Reporter to mark this document as defendants' exhibit number 5 for identification.

(Paper referred to is received as Defendants' Exhibit No. 5 for identification)

Q (By Mr. Deakins) Mrs. Daney I would like to show you a document which has been marked for identification as defendants' exhibit number5, and ask you please to look that document over. Have you had an opportunity to look it over?

A Yes.

Q Can you identify that that document is?

Mr. Rachlin: Doesn't it speak for itself?

Q (By Mr. Deakins) Is that the application you filed with Campbell Soup Company?

Mr. Finney: Can't we just go ahead and stipulate that this is the document she filed with Campbell Soup Company, and signed, and that the entries made on there with the possible exception of the last two ---

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Mr. Deakins: I think we had better interrogate her on that.

Mr. Finney: All right.

Q (By Mr. Deakins) Now Mrs. Daney, we have agreed that this is the application you filed with the Campbell Soup Company. You will notice on the front of it in the lefthand corner, the date, that is 5th month, 12, 1966?

A Yes.

Q Can you tell us whether or not you filed this application on the 5th mongh, which would be May, 12, 1966?

A Right around that time.

Q Did you fill in that date yourself?

A I filled it in.

Q And did you put the correct date on the application?

A I put the correct date on it.

Q Now you will notice in the upper lefthand corner on the front page of the exhibit the word "poor" is written in, underlined, is that your writing?

A No.

Q Do you see any other writng on this exhibit that is not your writing?

A Yes.

Q What else is not your writing?

A Up in there, um --

Mr. Finney: That is the Seenographer's identification mark.

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Q (By Mr. Deakins) Oh, I see. In the righthand corner the Reporter's identification mark, you did not put that in?

A No, I didn't.

Q Is there anything else you see that is written on either side of this document which is not your writing?

A I don't see anything else.

Q You filled in all the blanks that have been filled in?

A I did.

Q Did you answer those questions truthfully to the best of your knowledge?

A Yes, truthfully to the best of my knowledge.

Q All right, now Mrs. Daney, at the time you filled out this application at the Campbell Soup Company, did you have any discussion with anyone at Campbell Soup at that time?

A No, not when I filled out the blank.

Q Did turn in, did someone give you the application form and you filled it out and turned it back in?

A That's right.

Q Do you recall who that was?

A No, I don't.

Q Was it a man or a woman?

A A lady.

Q Can you recall, can you desdribe her?

A I really couldn't.

Q Did you have any discussion with her at the time?

A No, I didn't.

Q Now after the time that you filed this application did

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you ever have any further discussions with anyone at Campbell Soup Company about a job?

A No more than when they write me and send me that little card.

Q Pardon?

A No more than when they write me to come in.

Q Who wrote you to come in?

A I don't know, I think it was from the employment office, they say to be at the Campbell Soup Company at a certain hour that morning.

Q Did you receive some sort of postcard from the Security Commission?

A That's right.

Q I would like to show you a document marked defendants' exhibit number 2, and ask you to look at that. Was the received postcard you from the employment office, Employment Security Commission, a card cimilar to the one I am showing you as defendants' exhibit number 2?

A Well, it was something like this.

Q Do you recall what was stated on the postcard you received?

A I know it was something like that.

Q Did it say anything about wanting you to report to Campbell Soup Company?

A That's right.

Q Now at the time you received this postcard from the

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Equal, I mean from the, er, South Carolina Employment Security Commission, did you then go out to Campbell Soup and file this application we have been talking about?

A I had already filed the application blank before they called me. I filled out the blank before they called me.

Q You had already turned it in?

A Yes, turned it in.

Q So you received the postcard from the Employment office after you had filed your application?

A Later on.

Q All right, when you received this postcard from the Employment office did you then go out to Campbell Soup Company?

A That's right.

Q And what happend when you got out there?

A Well they told me that they was going to give me a interview, and it was four of us went together, and he called us, whoever the man was called all four of us back in the little place back there and just talked with us.

Q Did he call you in one by one?

A No, he call two of the girls and told two of us it was so late that afternoon, that two of us can stay out and two go in.

Q So two of you went in together, there was another girl that went in with you?

A I didn't go in. It was two more that went in, and he told this girl to tell us the same go for us too, the same interview was for all of us.

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Q So you actually were not interviewed?
A No, he told us it was too late, and he came out and talked to us, it was so late and he said he was talking about the same thing and it wouldn't be no need to talk with all of us, you all ride together, you all tell the others about it.
Q Who were these other girls with you at that time?
A Well two of them I don't really know them, but one of them is here with me now.
Q What is her name?
A Ethel Mae Burgess.
Q Was Mrs. Ethel Mae Burgess one of the ones that was interviewed?
A I think so, if no mistake.
Q So Mrs. Ethel MaeBurgess and one of the other ladies went in and were interviewed and you stayed outside and were not interviewed?
A Me and another girl.
Q And you don't remember that other girl's name?
A No, I don't.
Q Do you recall approximately when this was?
A Sometime in May, but I don't know just the date.
Q Sometime the same month you filed your application?
A I filed my application, one was filed at the employment office in February, and the other one was filed in May.
Q Right. Well was this time that you went out to the plant

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to be interviewed and were not interviewed, was that after you filed your application in May?

A That after I filed my application in May. I filed it, I think around about sometime the first of May, and maybe a week or two weeks later, from the Campbell Soup, they called me, say come out there.

Q All right, do you recall, was this a male employee of Campbell Soup Company that was interviewing these two?

A It was a man.

Q Do you see him in the room today?

A Well I don't know, this man had on glasses, I don't know. I don't recall who he was but he had on glasses.

Q You can't identify him in the room today?

A I didn't look at him too well.

Q You don't remember his name?

A No, I don't.

Q Now since th t time, that you went out there to be interviewed, have you ever been back out to Campbell Soup Company again?

A Yes.

Q How many times?

A Just once when they call me to come out there, I went. They call me back again, and when I went back they, um, the little card they sent me, they took this little card and it was a lady at the desk there and she told us that, she took

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the little card ---

Q That counter in the personnel office?

A That's right, she took the little card and said that was all of it, that was just to let us know we was qualified for the job.

Q Now how soon was this after the time you had gone out there for the interview?

A This was around the 27th of May.

Q So it would have been just a few days after you had been out there before?

A Yes.

Q Now did you go out there by yourself that time?

A No, I didn't go by myself.

Q Were there other people with you then?

A Two of us.

Q And were you interviewed by anyone at the time?

A No more than the lady took the card and, that we had and give us a paper, and this paper was just a paper that had, um, something about how much we start off with, how much you bee getting and how long you have to be working for a vacation, and, something like that.'

Q Well, did she go over your application?

A No, she didn't, she just told us that the plant wasn't quite ready yet. She said you can see, and said that whenever the plant is finished we will call you, and it will probably sometime in July, but there is a good bit more work to be

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done and whenever we get finish you all will be about the first to be called.

Q And you don't remember that woman's name?

A No, I don't.

Q Was this the same woman you talked to before when you filled out your application?

A No, this lady looked like she was a kind of a young girl, with red hair, that is all I remember.

Q Red hair?

A Yes.

Q Did you notice whether or not she wroteanything down when she was talking to you?

A NNo, I don't.

Q ~~How~~ who else was with you at the time?

A Ethel Mae Burgess.

Q And who else?

A That is all that day.

Q Just the two of you?

A That's right.

Q Did this woman talk to you at the same time she was talking to Mrs. Burgess?

A That's right.

Q She talked to both of you?

A That's right.

Q Neither one of you filled out an application at that time?

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A No, we didn't.

Q Now after that visit to the plant, did you ever visit the plant after that?

A No, I didn't go back no more, because she told me whenever the plant was finished they would call us.

Q But you never went back out there?

A I never went back.

Q Did you ever telephone out there?

A No, I didn't.

Q Now as I understand it you went out the first time and filed your application. Then you went out on two other occasions?

A Yes.

Q At any of those times did you ask for any particular job?

A Well I told her any, Ididn't say no particular job. I just said any job that they give me, boning checkens or even picking feathers, any of those.

Q Well on any of these occasions when you went out there did any representative of the Campbell Soup Company ever tell you that it would be useless for you to file an application?

A No.

Q Did they tell you you ought to go somewhere else for a job?

A No.

Q On any of these occasions did you attempt to file an application but were stopped from doing so by the company?

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A No, not by the Campbell Company.

Q Didn't tell you you couldn't file an application

A No, sir.

Q Have you ever worked for any other company?

A No, never.

Q I notice on your application that you show you were employed by some lady in Manning, South Carolina.

A That's right.

Q And this was as a maid?

A Yes.

Q Is it true you worked for her for about a year and a half?

A I still work for her.

Q Have you had any other job besides this one?

A Well every job I had was maid.

Q You never have worked for any plant of any kind?

A No.

Q Never worked in processing poultry?

A No.

Q How many different jobs have you had?

A Oh, about three or four.

Q Have you ever been discharged from any of those jobs?

A No.

Q Never have taken any sort of tests?

A No.

Mr. Rachlind Objection.

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Q (By Mr. Deakins) Do you have any relatives that work out at Campbell Soup Company?

A Yes.

Mr. Rachlin: Excuse me one second. Now we previously stipulated on the objection to these questions. In order not to waste time we stipulate that the objections made to this line of questions with the prior witness will be in effect on this examination?

Mr. Deakins: Right, that is fine.

Q (By Mr. Deakins) Do you have any relatives that work for Campbell Soup Company here in Sumter?

A Yes.

Q Who are they?

A Do I have to call the names?

Q Yes, I wish you would.

A Well, Laura Lee Helton.

Q All right, what relation is she to you?

A My cousin.

Q Do you know how long she worked there?

A No, but I know she was out there a year now.

Q She has been out there about a year?

A Yes.

Q You know what job she worked in?

A No, I don't.

Q And she is still working there?

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A Yes.

Q Do you have any other relatives that work out there or have worked out there?

A Well her husband was working out there until this ~~thing~~ spring coming.

Q You know what job he had out there?

A No, I sure don't.

Q What is his name?

A Freddie Helton.

Q Do you have any other relatives that work out there or have worked out there?

A Well, I don't have any, my daughter, her father in law worked out there.

Q Your daughter's father in law?

A That's right.

Q What is his name?

A Milroy McCants.

Q You know what his job is?

A No,I don't.

Q Is he still working out there?

A Up to Saturday, he told me he was.

Q You know how long he worked out there?

A He was out there before the plant was finished, because he helped build the plant out there.

Q Any other relatives or in laws that you have that work

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out there?

A No more, I don't have any more relatives.

Q Now these in laws that you mentioned of yours that work out there, are they negroes?

A Yes.

Q Do you have any friends that work out there, or have worked out there?

A Yes.

Q Who are they?

A Johnny McFaddin works out there.

Q This is a he?

A Yes.

Q Is he working out there now?

A I guess so, the last time I talk with him a little over a week ago he was.

Q Do you know whether he is negro?

A Yes.

Q Do you have any other friends that work out there?

A No.

Q Mrs. Daney, have you ever been arrested?

A No.

Q Ever been convicted of any crime?

A No.

Q You may have said this already, but did you take a manual dexterity test?

A That's right.

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A That's right.

Q All right, and when did you take that, or, excuse me, where did you take it?

A That is the finger test, the one you use the fingers?

Q The one with the washers and things.

A That's the one you are talking about ? I don't remember just what date I took it out there.

Q Did you take that one at the employment office?

A Yes, I took that one at the employment office.

Q Would that have been after you filed the application at the employment office?

A Yes.

Q Was it before you filed your application with the Campbell Soup Company, in May?

A No, it was after.

Q All right, so after you filed your application with the Campbell Soup Company, this one identified as defendants' exhibit number 5, then you took the manual dexterity test?

A Shortly after I filed, filled out the blank at Campbell Soup.

Q And after you took the manurla dexterity test you got this postcard from the Employment Security Commission?

A That's right.

Q Now the manual dexterity test, what basically did that involve, not in detail, but what did it involve?

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A Well, one that I took, the first one was working with these little washers, and the next one was the pegs.

Q Were there a group of people taking that test when you took it?

A Well I think it was about six I guess. Ididn't count them.

Q Was there one person giving all of you the test at the same time?

A Yes.

Q All right, and was there a certain time you had to do these things?

A Yes.

Mr. Rachlin: I am going to object to this line of questions, as being immaterial.

Mr. Deakins: Same objections you had on the last witness.

Q (By Mr. Deakins) How, do you happen to know who was giving this test?

A No, I don't.

Q The person who was giving you this test, have you ever seen that ~~perśn~~ person at Campbell Soup Company?

A No.

Q Is that the only time you took the manual dexterity test?

A That's the only time.

Q The representative of Campbell Soup Company, you never have taken a manual dexterity test at Campbell Soup?

A No.

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Q How old are you at the present time?

A Forty-nine.

Q And what is the date of your birth?

Mr. Rachlin: I think that is improper cross examination.

A September 17th, 1927.

Q I believe you said on your application September 28th?

A I mean , yes, 28th, 1917.

Q The year 1917?

A Yes.

Q Were you ever given any type of written test by the Campbell Soup Company?

A No.

Q The only thing you did out there in the way of filling any forms out with that application --

A That's right, I didn't know you had to take any test out there.

Q Nobody had told you you had to take a test?

A No.

Q I would like to show you a document which has been marked for identification as defendants' exhibit number 3. Have you ever taken a test such as that?

Mr. Rachlin: That is an improper question, she has answered that question.

A No, I never saw that test before.

Q Have you ever been given any physical examination by the

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Campbell Soup people?

A No.

Q Can you read and write?

A Yes, a little.

Q How many years of schooling have you had?

A I went up to the tenth grade.

Q And what school did you attend?

A Santee Rosenwald school.

Q That is a public school?

A Yes.

Q Did you finish the tenth grade?

A No, I didn't.

Q But you passed all the grades before the tenth grade, the first through the ninth?

A No, I did not, because we stayed in one little school, I guess a couple of years, until they build the Santee Rosenwald school and they I started climbing a little. We went to one little old one room school for a couple of years, and I stayed in there for a year or so.

Q And then you went to the Santee Rosenwald school?

A Yes, I made my grade every year after I went there until I stopped school.

Q What grade were you, did you start off at the Santee Rosenwald school?

A Something like the third grade I guess.

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Q All right, and one you got to the Santee Rosenwald school in the third grade, did you get promoted a grea grade every year?

A Every year.

Q So once you got to the Santee Rosenwald school you didn't flunk any?

A No, I didn't, passed every grade.

Q How many years had you been in this other school before you went to the Santee Rosenwald school?

A I don't know, I reckon three or four years, something like that.

Q Were you given arithmatic courses in the Santee school?

A Yes, I took arithmatic?

Q English courses?

A Yes.

Q Reading course and writing courses?

A Yes.

Q And you passed all of those?

A Yes.

Q Have you ever received any sort of disability payments of any kind for any injuries?

A No.

Q Ever had any lawsuits as a result of injuries to you?

A No.

Q I would like to show you a document which has been marked

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for identification as defendants' exhibit number 4, and ask you to look at that. Have you ever filed any type of charge with the Equal Employment Opportunity Commission on that type of form?

A Yes.

Q How many charges have you filed with the Equal Employment Opportunity Commission?

A One to my knowledge.

Q Just one?

A Yes.

Mr. Deakins: I will ask the Reporter to mark this document for identification as defendants' exhibit 6.

(Document referred to is received as defendants' exhibit No. 6 for identification)

Q (By Mr. Deakins) I would like to show you a document, Mrs. Daney, which has been marked for identification as defendants' exhibit number 6, and ask you what that is.

A Well this something you said I wrote?

Q I am asking to look it over.

Mr. Rachlin: While we are waiting we, note our objection to the admissibility of the question, as being incompetent, irrelevant and immaterial, not the original.

Q (By Mr. Deakins) Have you had an opportunity to look that over?

A Yes.

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Q I will ask you, Mrs. Daney, whether or not your signature appears on the second page of this document, next to the numbers 768 and then 1A?

A Yes, that's right.

Q Now is that a copy of the charge that you filed with the Equal Employment Opportunity Commission?

A Well I really don't know whether that's a copy of not.

Q That is your signature?

A That is my signature.

Q Do you remember putting your signature on a paper?

A Yes, I did.

Q Is that something that was filed with the Equal Employment Opportunity Commission?

A Well I just can't remember, but I guess so. But I don't really remember.

Q Well do you recall filing anything else with the EEOC, besides this document?

A No, I don't remember.

Q You don't recall filing anything on a form like defendants' exhibit number 4, one of these printed forms?

A No, I don't.

Q I notice Mrs. Daney, that defendants' exhibit number 4 for identification, which has your signature on it, is dated October 4th, 1966, you see that?

A I see it, yes.

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Q Is that the date on which you signed this document?
A I really don't know, it probably is but I don't remember.
Q To the best of your recollection is that approximately when you signed it?
A Well, to the best of my recollection.
Q Now as you can see there a number of other signatures on this also. Now can you tell us whether or not you signed this ocument in the presence of any other persons.
Mr. Rachlin: Objection, irrelevant.
A Yes, I had to I guess, I had to sign it in the presence of someone there.
Q Do you remember where you were when you signed it?
A No, I don't.
Mr. Rachlin: Objection.
Q Do you remember who prepared it?
Mr. Rachlin: Objection.
Q (By Mr. Deakins) Who wrote the statement down?
A No, I don't know who prepared it.
Q Well is any of the writing on the first page of this defendants' exhibit number 6 your writing?
A No.
Q Is there anything on this document other than your name and address that is your writing?
A Not as I remember, nothing else my writing.
Q Then you don't recall the circumstances under which you

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signed it?

A I don't know exactly when.

Q Well do you recall where you were?

A No, I don't know what place I was.

Q Well do you recall who else was present?

A No, I don't.

Q Did you know what you were signing when you signed it?

A Yes, I know.

Q Who told you what you were signing?

Mr. Rachlin: Objection.

A Well it must be the, I thought it was some Government men, I don't know the names.

Q There were some Government men there at the time?

A I believe it was.

Q Do you know a lawyer by the name of Dorothy V. Sampson?

A Yes.

Q Was she there?

A Yes, she was there. I really don't remember all the places and times.

Q Now that you remember that Mrs. Sampson was there and there were some Government people there, do you recall any more about the circumstances under which you signed that paper?

A Mmm No more than she, I mean, just ask us about did we, um, put our complaint before her, and she asked did we wanted to sign this complaint.

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Q All right, so, before you signed this document, did you have some discussion with Miss Sampson?

A Well no more than told about the compl ints.

Q What did you tell her?

A Well I don't remember --

Mr. Rachlin: Just a minute, I am going to instruct the witness not to answer the question. It is not relevant, doesn't even relate to this complaint.

Mr. Deakins: I am asking this witness what she told Mrs. Sampbon before this document was signed.

Mr. Rachlin: First you are asking her to violate her rights, er --

Mr. Deakins: Are you objecting on the attorney-client privelege?

Mr. Rachlin: Objecting on that ground and also that this, the,doesn't relate, that the complaint that is before this proceeding, it doesn't relate to it, and it is not a matter for investigation. I don't know what it is.

Q (By Mr. Deakins) Did you ever retain Mrs. Sampson as your attorney?

A No.

Q Did she ever represent you as an attorney?

A No.

Q Did Mrs. Sampson ask you to sign this document?

A Well she didn't ask me to sign it. I mean, she didn't tell me I had to.

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Q Did she ask you if you wanted to?

A Yes, she asked if I wanted to.

Mr. Rachlin: I am going to interrupt again, this complaint as it refers to defendants' number 6 for identification, does not even relate to the subject matter that we are discussing i n this proceeding.

Mr. Deakins: According to your answers to interrogatories, this is the only employment practice charge that was ever filed. And that to me is very relevant to this litigation. Are you instructing the witness she can't answer questions about the circumstances under which she signed this document?

Mr. Rachlin: Go ahead.

Q (By Mr. Deakins) Before you signed this document did you discuss with Mrs. Sampson what your complaints were towards Campbell Soup?

A Yes.

Q What did you tell her?

A Well I don't remember just all the things I told her.

Q Tell me everything you do remember.

A Well I don't remember much of anything that I told her at that time.

Q Did you make any complaints to her about the South Carolina Employment Security Commission?

A No, I don't think so.

Q You don't remember any of the complaints you made to her?

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A No.

Q Did anyone besides Mrs. Sampson ask you to sign this document?

Mr. Rachlin: We object to the question as to the form, the witness has already stated nobody asker herto sign the document.

Q (By Mr. Deakins) Did anyone besides Mrs. Sampson ask if you would like to sign this form?

A I don't remember.

Q Was Reverend Lewis present when you signed this form?

Mr. Rachlin: The record will note we will have objections to any and all questions relating to this exhibit number 6 for identification.

A He might have, I don't really know, whether he was there or not.

Mr. Finney: May I interpose another objection, that this document refers to defendants' exhibit number 6, says that, this is page one of a three page document. We only have two pages before us at the present time. I know nothing about the document, whether it was two or three pages or what.

Mr. Deakins: I am sorry, that is all I have ever seen.

Q (By Mr. Deakins) Again showing you defendants' exhibit number 6 for identification, do you recall how many ---

Mr. Rachlin: I am going to instruct the witness not to answer any questions about this document, in view of the fact it is incomplete on the face of it, we can't even ---

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Mr. Deakins: You are not even going to let me attempt to identify this document to the witness?

Mr. Rachlin: That's right, it has been ideitified, you identified it. I instruct the witness not to answer any further questions about this document. If you want to bring the, a complete document in, it says three pages on the face.

Mr. Deakins: And then you are going to object to it even after it has been identified? You are attempting to prove the substantive proof of this document, to the document = itself.

Mr. Rachlin: No, we are not attempting to prove anything of the sort.

Q (By Mr. Deakins) Do you recall the document that you signed, how many pages the document was that you signed?

A No, I don't.

Q Do you recall what it said?

A No, I didn't, er --

Q When you placed your signature on the document, do you recall how many other sheets there were to the document?

A No, I don't.

Q Did you read the document?

Mr. Rachlin: That is improper cross examination of your own witness.

Mr. Deakins: My own witness?

Mr. Rachlin: You called this witness, for the purpose

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of depositions before trial, and for that purpose she is your witness. You have no right to cross examine her.

Mr. Deakins: Obviously her recollection needs refreshing, and that is exactly what I am doing.

Mr. Rachlin: Not obviously at all. You are caught with a document that is incomplete and now you are trying to make her prove something for you.

Mr. Deakins: I am trying to show whether or not this is a complete document. It is the document that was provided to us.

Mr. Raclin: Well, that is your problem. Don't xx stick us with your problem.

Q (By Mr. Deakins) Do you recall how many pages there were in this document?

A No, I don't.

Q Do yourecall what it said?

A I guess, some of the things.

Q What did it say?

A I really don't know, it is a good while since I seen that, I really don't know just what did it say.

Q Were you provided with a copy of the charge that you filed?

A No.

Q Do you know what she did with the charge after you filed it?

A No.

Mr. Rachlin: I object to the form of the question on the

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ground that there is some assumption in that question that that is a charge of some kind.

Mr. Deakins: I didn't make any reference to this document, counsellor.

Q (By Mr. Deakins) Do you recall anything that was mentioned in that charge that you signed?

A No, I don't.

Q Now Mrs. Daney, do you claim to have been discriminated against by Campbell Soup Cmmpany?

A Yes.

Q What do you base that claim on?

A Well, race and education is what I base it on, that is, um, the Wonderlic test, I didn't thought, you need to take the Wonderlic test for boning chickens, because you know it don't take that kind of test to pull the feathers off a chicken, and that is why I was discriminated.

Q You feel you were discriminated against because Campbell Soup Company requires people to take this Wonderlic test?

A Yes, that kind of test just to bone chicken and pick feathers, because I been boning and picking feathers all my life.

Q Is there any other reason?

A Well, that is my biggest reason.

Q Can you think of any other reason?

A No, I can't.

Q You don't base your claim of discrimination on education

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requirements then?

A Well that is one thing, because they all know that the negro don't have the education that the whites have, they know that.

Q Did any representative of the company ever tell you --

A No, they never told me nothing about it.

Q Any other thing that you base your claim on?

A No.

Q It is my understanding, you have never been given the Wonderlic test?

A Well I didn't even know you had to take it. They told me they would call me and all I had to do was to taka a physical, and they would have their doctors and nurse there and when the plant was open they would call me and have the doctor give me a examinati n, and I thought that would be all and I w ould go to work. I didn't know you had to take that test.

Q Did any representative of Campbell Soup Company ever make any reference to your race in any of your discussions with them?

A No.

Q Did they ever make any statements to you about treating negro people any different from white people, when they applied for work?

A No, not to me they didn't.

Q Have you ever been given any instructions by anyone concerning how to take the Wonderlic test?

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Mr. Finney: We object to the question on the ground it is irrelevant. Go ahead and answer.

A No.

Mr. Deakins: No further questions.

EXAMINATION BY MR. FINNEY

Q Mrs. Daney, did anyone at Campbell Soup tell you why "poor" was written on your application?

A No.

Q And you were never interviewed or talked to about, by any representative of Campbell Soup?

A No.

Q And you took the manual dexterity test and passed that?

A Yes. That is what they told me.

Q And they told you as soon as the plant opened you could come to work?

A Yes, come to work.

Q Did they ever ask you to take the Wonderlic test or any other test that you did not take?

A No.

Q Didany of these relatives you mentioned in response to Mr. Deakins' questions, do they live in your house with you?

A No.

Mr. Finney: I have nothing further.

EXAMINATION BY MR. DEAKINS

Q I believe it is true that after you filed your application

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you talked to a lady at Campbell Soup two different times?
A No, I never talked but one time, a lady but one time at Campbell Soup.
Q And one of the times, I understood when you talked to this lady, she gave you a sheet, telling you what the benefits were and what the payments were ---
A Well the first lady I talked with only gave me a blank. I asked her for a blank to put in a application, and that was a kind of older lady, she only give me a blank, she didn't give me no --
Q That was when you filed your application?
A That;s right.
Q But after you filed your application, you went out there two different times?
A I went out there one time to be interviewed and we was late and this mak talked with two of the girls and told us it was late, it was the same thing and the rest of the girls would tell us what he told them.
Q All right, but then after that you went back again?
A I know, that was the time, when I went out there and she told us that we, that was just to let us know that we were qualified for the job and when the plant opened they would call us.
Q And you and Mrs. Burgess were there then?
A That's right.

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MRS. ETHEL BURGESS
was duly sworn and testified as follows:
EXAMINATION BY MR. DEAKINS

Q Is it Mrs. Burgess?

A Mrs. Ethel Mae Burgess.

Q Now Mrs. Burgess, have you ever filed an application for employment with Campbell Soup Company?

A Yes, I did.

Q Did you fill out a written form and turn it in?

A Yes, I did.

Mr. Deakins: I ask the Reporter to mark the, this document for identification as number 7.

(Document referred to is received as defendants' exhibit 7 for identification)

Q (By Mr. Deakins) Iwould like to show you a document which has been marked for identification as defendants' exhibit number 7. Would you state whether or not the signature that appears on the second page of that document, Ethel Mae Burgess, is your signature?

A Yes, it is.

Q Did you fill out the contents of this application?

A Yes, I did.

Q All right, and you notice up in the upper far lefthand corner is the word "fair" underligned?

A Yes.

Q Did you write that in?

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A I didn't put "fair" on it.

Q Did you fill in all of the rest of the application? Is the rest of the application in your handwriting?

A It is my handwriting, with pencil.

Q Now this application is dated 6-12-1966?

A Yes.

Q Is that the date on which you filed this application?

A Yes.

Q That would be June 12th, 1966?

A Yes.

Q Now before you filed this application with Campbell Soup Company, had you ever previously or before that, filed any application for employment with Campbell Sogp Company?

A No, I didn't.

Q Did you ever file another application for employment with Campbell Soup Company after you filed this application?

A ~~A~~ Well I filed one at the employment office and went out to Campbell Soup.

Q All right, you filed one at Campbell Soup?

A Yes.

Q After you filed that one at Campbell Coup did you ever file another one?

A No.

Q Now before you filed this application for employment with Campbell Soup had you ever had any contact with Campbell

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Soup before?

A No, I didn't.

Q Never had any discussions with any repreeentatives out there before?

A No, I didn't.

Q Where were you when you filled out this application?

A The first one?

Q No, the one I am showing you now, defendants' exhibit number 7.

A At the plant.

Q All right, were you provided with this form by one of the representatives of Campbell Soup?

A Yes, I was.

Q Do you remember who that was?

A It was a lady.

Q Can you desdribe her?

A No, I didn't pay any attention.

Q And you filled out the application and turned it back in at that time?

A Yes, I did.

Q You gave it back to the same lady?

A Yes.

Q Did you have any discussion with the lady at that time?

A No, I didn't.

Q All right, now after you filed this application did you have

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any other discussion with anyone at Campbell Soup Company after that?

A After I filed it?

Q Right.

A No, only they called me, I mean, after I filled this out, they called me for the hand test in the employment office.

Q They what?

A After I file my last application out they called me for a test at the employment office.

Q Who called you?

A I don't know, I just got a card.

Q Someone said to go down to the employment office?

A Come to the employment for the test.

Q All right, now before you filed this application, which is identified as defendants' exhibit number 7, you had earlier filed an application with the Employment Security Commission, right?

A Yes.

Q But before you had filed this application, which is identified as defendants' exhibit 7, you had not been given a manual dexterity test?

A No, I had not.

Q Did you go down to the employment office after you filed this application and take a manual dexterity test?

A They called me after I filed this one.

Q And you went to the employment office?

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A Yes, I did.

Q Were you given the manual dexterity test?

A Yes, I did.

Q Do you recall about when that was?

A In May I think.

Q Well now, you filed this application in June, was it after that?

A Yes, it was after this one.

Q So it would have been after June 12th?

A Yes, it was right after, it wasn't long.

Q When were you given this manual dexterity test, when you were given the manual dexterity test, were there any representatives of Campbell Soup there that you know of?

A No.

Q Were you given this test with a group of other people?

A Yes, I was.

Q What basically did the test involve?

A Just with your fingers, hand work.

Q And did you have to move some washers and put some pegs in holes?

A Pegs in holes, and put them back and forth.

Q And you were timed? You had a certain time to do it?

A Yes.

Q Now after you took this manual dexterity test did you ever receive any postcard from the Employment Security Commission?

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A Yes.

Q All right, I would like to show you a document which has been marked for identification as defendants' exhibit number 2, and ask you whether or not this is the type of card that you received.

A Yes.

Q All right, what did you do with that card?

A They tell me to bring it back to Campbell Soup. When I received the card, they told me to bring it back to the Campbell Soup, so I did. I take it back.

Q You took the postcard to the Campbell Soup Company?

A Yes.

Q And who did you give it to?

A A girl.

Q Did you talk to the girl at the time you gave it to her?

A Well she just said this car represent that I passed the test and was qualified with the work.

Q All right, did you have any other discussion wth her?

A No, I didn't, ~~xk~~ she said I would be called when the plant open, that was all.

Q No further discussion?

A No.

Q Was there any mention made that you had an application on file?

A Nothing, not but one, this one.

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Q All right, and that was already on file when you took the postcadd there?

A Yes.

Q Now after you delivered that postcard out to Campbell Soup Company, did you ever go back out there again?

A No, I didn't.

Q Did you ever telephone out there?

A No, I didn't.

Q You never in any manner checked on your application after sent that, took that postcard out there?

A No, I didn't.

Q So as I understand your testimony now, Mrs. Burgess, you went out to the plant two different tim?

A Yes.

Q First when you filed your application and next when you delivered the postcard?

A Yes.

Q Was it the same woman that you talked to both times?

A I don't remember that, I didn't pay her any attention.

Q Do you remember anything else about the discussion you had?

A No.

Q And you never talked to any other person at Campbell Soup Company?

A No.

Q You know Mr. Partin out there?

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A No, sir, I just really know him today.

Q You never talked to Mr. Partin about a job?

A No.

Q Did anybody at Campbell Soup ever tell you you could not fill out an application and turn it in out there?

A No, they didn't told me.

Q Did they ever tell you you would be wasting your time?

A No, they didn't tell me that.

Q Now, you know Mrs. Carrie Mae Daney?

A Yes, I do.

Q And you were present when we were taking her deposition?

A Yes.

Q Dd you ever go to Capbell Soup plant with her?

A Yes, we went together.

Q How many times did you go out there with her?

A Two times. I filled out the application and the next time to take this card back.

Q All right, now at the time you went out there the second time with Mrs. Daney, was there anybody else with you all at the time?

A No, just us two.

Q All right, now the first time you went out there with her, ws there anybody else with you?

A Yes.

Q Were there two other womenwith you?

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A More than two. When we make the application, it was more than two.

Q You went out together?

A Yes.

Q How many of you were there?

A I don't remember but it was more than two.

Q Do you remember the names of the other people that were with you?

A No, I don't remember all of them.

Q You remember any of them?

A Well ~~there~~ they is not here.

Q Pardon?

A I say they is not here.

Q You recall their names?

A Well yes, two of them.

Q Who were they?

A Henrietta Blackwell, but I don't remember the other lady's name.

Q All right, there were four of you at least?

A Yes.

Q Now when you all went out that time, were you taken into an office and talked to?

A Well I went in to be interviewed, I mean, a little room.

Q Did any of the other three go in with you?

A One more.

Q And which one was that?

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A I don't remember who it was.

Q Was it Blackwell?

A No, it wasn't her, it was the other lady, I think.

Q The other lady whose name yu can't recall?

A Yes, I can't remember.

Q Do you know of any way you could refresh your recollection to find out who that other lady was, her name?

A No, I can't remember now.

Q Do you see her in this room?

A She is not here.

Q You know whether she is working at Campbell Soup Company?

A No, she is not.

Q All right, when you and this other lady were called in to the office, who talked to you?

A It was a man.

Q A man?

A Yes.

Q Do you see him in the room now?

A It wasn't Mr. Partin, one with glasses on.

Q Was it this gentleman here, Mr. Godzdz?

A I don't know, I didn't pay much attention, but he was wearing glasses.

Q And he had your application?

A Well I give it back to the lady, the girl.

Q And, after he got through talking to you?

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A After we fill it out, I give it back to the girl and he just take us in there to interview us.

Q Did he take the application in there with him?

A I don't remember.

Q What discussion did you have with him in there?

A Well he just tell me what we could expect, if we get the job, but I don't ---

Q Pardon?

A He just tell me, you know, what would be expect if we get the job, I don't remember all what he said.

Q Did hetell you what the job would require if you got it?

A Yes, what it would be like.

Q Do you remember anything he told you what it would be like, what you would be going?

A It been so long I can't remember.

Q Do you remember anything else about the discussion?

A No, I don't.

Q Well when you and this other lady came out of the office with the man with glasses on, do you recall him making any comment about this applying to the others too?

A He told me to tell the other two what he tell me, it would go for the others. It was so late he couldn't take them one by one.

Q I don't want to misquite you but I am trying to find out what wassaid in that meeting. Was it explained, the various

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things about the job, to you?

A Well I guess so, I don't know.

Q Did he ask you any questions about the application?

A No, he didn't.

Q Did he ask you any questions about your experience?

A No, he didn't.

Q Or anything like that?

A No, he didn't.

Q And you have not been out there any more than the two times you told us about?

A No.

Q Mrs. Burgess, have you ever worked for any company that is engaged in processing poultry?

A No.

Q I notice on your application, which you have before you, that you list your only employment as working as a maid for T. M. Brown.

A Yes.

Q Is that the only other job you have ever had?

A Yes, it is.

Q Are you still working there?

A Still there.

Q You never worked in any type of plant of any kind?

A No.

Q Have you had any relatives who worked at Campbell Soup

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plant here in Sumter?

A No, I don't.

Q Do you bave any family working out there?

A No, I don't.

Q Have you ever been arrested?

A No, I have not.

Q How old are you at the present time?

A Thirty-nine.

Q And what is your birthday?

A August 26, 1926.

Q All right, I show you a document which has been marked for identification as defendants' exhibit number 3, and ask you whether or not you have ever been given that type test before.

A No, I have not.

Q Have you ever been given any type of test by the rppresentatives of Campbell Soup Company?

A No.

Q The only thing you filled out there was your application?

A Yes.

Q Have you ever received any notifi ation from Campbell Soup Company that they wanted you to take any kind of test?

A No.

Q Have you ever been given any instructions by anyone as to how to take a Wonderlic test?

A No.

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Q How to answer it?

A No.

Q Have you ever taken any form of written test supporting the application for employment anywhere?

A No.

Q Have you ever applied for employment with any other type of plant besides Campbell Soup?

A No, I haven't.

Q And you can read and write, is that correct?

A Yes.

Q How many yeears of schooling have you had?

A Tenth grade.

Q And where did you attend school?

A Manning.

Q Is that here in Sumter?

A No, Manning Training School, it is in Manning.

Q And you went to the tenth grade?

A I entered the tenth grade. I didn't go all the way through.

Q Did you finish all of the grades before that on a yearly basis? Were you promoted each year?

A I passed every year.

Q Was that a public school there in Manning?

A Public school.

Q While you were there did you take arighmatic courses?

A Yes, I did.

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Q English courses?

A Yes.

Q Reading and writing courses?

A Yes.

Q Mrs. Burgess, just to be sure I understand your testimony. You went to the tenth grade level at Manning, is that correct?

A Yes.

Q It would not be correct to say you just finished the eighth grade?

A No.

Mr. Finney: I will stipulate, according to my notes I have eighth grade level.

Q (By Mr. Deakins) Were you ever given any physical examination in support of your application for employment with Campbell Soup Company?

A No, I have not.

Q Have you ever received any disability payments for any kind of injury?

A No.

Q Now Mrs. Burgess, have you ever filed any charge with the Equal Employment Opportunity Commission against Campbell Soup Company?

A Yes, I did.

Q All right, do you recall approximately when it was that you did this? When you filed this charge?

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A No, I don't remember, but I know I filed it.

Q Do you recall whether or not Mrs. Carrie Mae Daney was present when you signed this charge?

A Yes.

Q Were there other people present?

A Yes, it was.

Q All right, do you recall who prepared the charge or complaint, or whatever it was.

A Who prepared it?

Q Who wrote it up.

A I don't know.

Q Was Miss Dorothy Sampson present when you signed this charge?

A Yes, she was present.

Q But you don't know who wrote it up?

A No.

Q Did you read it before you signed it?

A Well, a little bit.

Q What do youremember reading before you signed it?

A It is too long for me to remember.

Q Mrs. Burgess, I am not going to ask you any more questions about that paper there, did you read the whole document before you signed it?

A I don't know whether I did or not.

Q Were there a group of people signing this document at the

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same time you were?

A Well I was concerned about myself, I don't know.

Q Pardon?

A I don't remember whether it was a whole group, but it was more people there.

Q You don't know whether they were signing it or not?

A I didn't really pay attention what they was doing.

Q Where were you when you signed it?

A I don't remember.

Q You don't have any idea where you were?

A I just don't remember, long time.

Q How long?

A Over a year, I don't remember what time it was.

Q Well did anybody ask you if you wanted to sign this document?

A Well they didn't ask me if I wanted to, I been wanted to.

Q Nobody asked you to sign it?

A Didn't ask me too.

Q Who presented it to you to sign it?

A I don't remember who it was.

Q Well at the time you signed this, were you, was it represented to you that this would be filed with the Equal Employment Opportunity Commission?

A Would it be filed with them?

Q Yes, did anyone tell you that?

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A I don't remember.

Q I would like to show you a document which has been madked for identification as defendants' exhibit number 6, and ask you to look at that document, look it over.

Mr. Finney: Of course we interpose the same objection, as to it being an incomplete document,

Q (By Mr. Deakins) Have you ever seen that document before, Mrs. Burgess?

A No, not this, I don't remember seeing this. Not this writing.

Q Well does that resemble any, in any way the chage that you signed?

A Yes, it does.

Q How is it different from the document that you signed?

A Well I just didn't see all this writing on here when I signed it.

Q Are you referring now to the first page?

A Yes.

Q Now does your signature appear on that document anywhere?

A Yes, it does.

Q On page 2?

A Yes, page 2, line 17.

Q Is that your signature?

A That's my signature.

Q And you wrote your signature and your address on there?

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A Yes, I sure did.

Q Did you write anything else on that document?

A No, that is the only this I had on there --

Q Pardon?

A No, I didn't.

Q Can you think of anything that is different about the charge that you signed than this document, any difference about it?

A Well, I don't know.

Q You remember how many pages the document was that you signed?

A No, I don't remember.

Q Do you remember what page you signed, was it the first sheet, the second sheet, the third sheet, or what?

A No, I don't remember that.

Q Now is it your recollection, Mrs. Burgess, that you signed, that you read the whole charge before you signed it?

A No, I didn't read it.

Q You didn't read it?

A No, I didn't read the whole charge.

Q You just signed it?

A Yes, I did.

Q You didn't read any of it?

A I read some but I don't remember what I read.

Q Do you remember how many pages you read?

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A No.

Q Do you remember that the document said anything about the South Carolina Empoyment Security Commission?

A No, I don't.

Q Would it refresh your recollection if I represented to you that you signed this charge sometime in October, 1966?

A Well, it might be, I don't remember when it was

Q Pardon?

A I say it might be, I don't remember when it was, it been a long time.

Q Was it in the fall of the yar?

A Yes, I think so.

Q Last year?

A Yes.

Q It would have been after you filed your application with Campbell Soup?

A It was after.

Q Now Mrs. Burgess, you claim that you have been discriminated against, by Campbell Soup Company, is that right?

A Yes.

Q What do you base that claim on?

A Education, and, um, I forgot the other one.

Q You forgot what else you base the claim on?

A Yes.

Q Do you recall that you based your claim on two different

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things?

A That is what I had in mind, but I forgot one of them now.

Q Well one of the reasons for your claim is education?

A Yes.

Q Now what is your claim in that regard, how do you claim that you have been discriminated against, because of education?

A Well they had, I don't know when I first put in it was grade level, but after I put in for Campbel Soup it was a grade level.

Q Who told you that there was a grade level for employment?

A I don't remember who tell me that now.

Q Was it any representative of Campbell Soup Company?

A No.

Q Did any representativk of Campbell Soup Company ever make any statement to you concerning education requirements?

A No, I didn't talk to them much.

Q And you don't recall who told you what the educational requirement was?

A No, I don't.

Q Do you recall what they told you the educational requirement was?

A I didn't understand you.

Q Pardon?

Q I didn't understand what you asked me.

Q Do you remember what they told you the educational requirement was, whoever it was that told you?

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A Well they didn't told me but I heard them told some what I have been around, but they never have told me.

Q The company hasn't told you?

A No. I imagine what goes for one goes for the other. They never had told me but the ones I have been around told me.

Q And what did they tell you?

A Wel I just heard it, I dndn't say notning to them, I just head it when they talk.

Q What did these others tell you?

A Didn't tell me nothing, I didn't ask them any questi ns.

Q I am sorry, I am being confused. I though someone else that had applied out there told you that there was an educational requirement.

A No, I, no, they didn't tell me.

Q Did anyone tell you that there was an education requirement at Campbell Soup?

A No one at Campbell Soup.

Q What do you base your claim of discrimination on as to educational requirement?

A Well I tell you one, but I can't remember the other one.

Q My question is, you say that one reason you feel that you were discriminated against was because of the educational requirement, is that right?

A Yes.

Q All right, how do you feel you have been discriminated

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against in that regard?

A Well because they never has called me to come to work, and the told me they would when it first opened.

Q And you feel it was because you didn't have enough education?

A Yes, it had to be something.

Q Did anybody at the Campbell Soup Company ever tell you you didn't have enough education?

A No.

Q Well has anybody ever told you that there was an educational requirement out there?

A No on in the office ever tell me, I just heard it.

Q No one has ever told you anything about an educational requirement t Campbell Soup Company?

A No.

Q And you have another reason that you feel you have been discriminated against, besides the educational requirement?

A Yes, but I just can't remember it.

Q Is it this Wonderlic test?

A Yes, that's one.

Q Is that the second reason you feel you have been discriminated against?

A Yes, I didn't thought they was supposed to have that.

Q Besides the educational requirement and the Wonderlic test, are there any other reasons why you feel you have been discriminated against?

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A No.

Q In what manner do you feel you have been discriminated against because of the Wonderlic test?

A Well I didn't thought it required that test, that we was, we didn't have to require that test.

Q Has anyone ever told you that it was required?

A Yes, different people said they take it but no one called me to take it.

Q But you, has any representative of the Campbell Soup ever mentioned to you anything about a Wonderlic test?

A No.

Q About having to take it?

A No.

Q Or it being a requirement for a job?

A No.

Mr. Rachlin: From the nature of those questions I would getthe impression, unless I misunderstand it, that the test was not company policy, are you suggesting that it was not company policy?

Mr. Deakins: I am not suggesting anything. I am asking the questions.

Mr. Rachlin: Then you are cross examining. If you are trying to find out whether it was or was not company policy that would be appropriate, but if you are trying --

Mr. Deakins: I don't think this would be the witness to

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try to find out what the policy is. I am trying to find out what she was told.

Mr. Rachlin: But your questions would indicate that was, that there was not company policy.

Mr. Deakins: You shouldn't assume that my questions indicate anything, I am looking for information from the witness.

Mr. Rachlin: The information, as to that question, is irrelevant, because there is no doubt that that was company policy.

Q (By Mr. Deakins) And you have no other reason for claiming that you have been discriminated against?

A No.

Q Do you make any claim that the manual dexterity test that you took was administered to you unfairly in any way?

A No, I never had it.

Q The manual dexterity test?

A Oh, yes, I had that one.

Q Do you claim that was unfairly administered to you in any way?

A Well I didn't think that was unfair.

Mr. Deakins: I have no fhrther questions.

EXAMINATION BY MR. FINNEY

Q Mrs. Burgess, did you get a copy of the decision from the EEOC, in the case of Maybelle Williams vs. Campbell Soup

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Company? Did they mail you a copy of this decision?

A One like that (indicating papers)?

Q Yes.

A No, I didn't get one like this.

Q All right, you did not get a copy of this decision?

A No.

Q Did Campbell, did an employee or person at Campbell promise you that when they finished the plant you would be called to come to work?

A Yes.

Q And this was before the plant was opened?

A Yes, sir.

Q And after you passed the manual dexterity test?

A Yes.

Q And what did they tell you about any other requirements you ould have to meet at that time?

A Nothing but take the physical.

Q They told you you would have to take a physical?

A Yes, sir.

Q Have they ever given you an opportunity to take the physical?

A No.

Q Have they ever called you to take the Wonderlic test?

A No.

Q The only test that you have taken was the finger test?

A Yes.

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Q And you were told you passed that?

A Yes.

Q Subject to my previoss objection, this document, which is referred to as exhibit number 6 for identification, was this read to you before you signed it? Did anybody stand up and read it, or do you remember?

A I don't remember whether it was reador not.

Q Do you have any reason to think why, after promising you a job that they never called you to come to Campbel Soup?

A Well I -- no.

Q Since you were promised a job have they employed other people at Campbell Soup that you know of?

A Yes, I know a lot of them.

Mr. Finney: Nothing further.

EXAMINATION BY MR. DEAKINS

Q Who have they employed?

A A lot of white people and a few colored, but I don't really know them. I know them when I see them but I don't know the names.

Q Who, how do you know that those people were employed after you applied?

A Well, you asked me how does I know?

Q Yes.

A Because they wasn't working up there before.

Q How do you know?

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A Because I know, they wear the uniforms.

Q Pardon?

A I say I know they work here because they wear the uniforms and the names on it.

Q This is one person you are talking about?

A No, more than one, a lot of them.

Q You know any oftheir names?

A No, I don't know their names.

Q And how do you know they were not employed there before you applied?

A Because they wasn't wearing the uniformes, and I see them in Manning.

Q Have you seen any negroes?

A A few.

Q Now who was it that told you that thee would be a job available for you later out there?

A Well I don't remember the lady's name that told me, about being qualified, I don't remember her name.

Q Didn't that lady tell you that they weren't hiring people right then, they would be hiring people later?

A When it opened, yes.

Q Right. And she said they would be hiring people when the plant opened?

A When the plant opened.

Q Did she tell you who the people were that she was going

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to hire?

A No, I didn't ask her.

Q She didn't say you?

A She said you will be in the first ones.

Q What did she say?

A She said I will be in the first gropp when they start hiring.

Q Did she say why?

A She said to me, I would be in the first group when they start hiring, to work.

Q Did she say why?

A No, she didn't say why.

Q Can you physically describe this woman for me? What did she look like?

A No, because I didn't pay her too much attention.

Q Well the man thattalked to you, that took you inside the office, he didn't make a statment like that to you?

A No.

Q He didn't tell you you would be the first one to be hired or anything like that?

A No.

Q He didn't tell you ou would be hired?

A No, he didn't.

EXAMINATION BY MR. FINNEY

Q This lady you are talking about, she didn't extend her hand

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to you and introduce herself to you?

A No, she didn't.

Q And she was working behind the counter at Campbell Soup?

A Yes.

Q And this man that you talked to, he didn't extend his hand and introduce himself to you?

A No.

Q Was there any name on his desk or anything that you could see?

A No.

Q At the time you went out there and you had your discussion with Campbell Soup, did anybody, had they opened up the poultry line or anything at that time? Had they started hiring people?

A I don't remember whether they did or not.

Q But that was back in May or June of 1966?

A That's rright, it was in May.

Q And you, have you occasion since then to hear hoe many people they have got working out thee, or approximately?

A No, I don't remember.

Q On this application, the word "fair" up in the lefthand corner, you didn't writethat, did you?

A No.

Q Did the man, who interviewed you, have this application before him when he talked to you, as far as you know. Did

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you see this application when you were in the office talking to the man?

A I dodn't pay no attention really.

Q Did you or not see it?

A I don't think I see that. Because I hand it back to the lady.

Q And you didn't see the lady give it to the man?

A No, sir.

Q And you didn't see the man with it when he was talking to you?

A No.

Q How long did he talk to you?

A Just a few minutes, he say he was in a hurry to go, looked like.

Q And he didn't ask you anything about your background or anything like that?

A No.

Q He didn't ask you where you worked or anything?

A No.

Q Just told you about the kind of jobs that had at Campbell?

A Yes.

Q Did he tell you they were hard jobs?

A No, he didn't tell me that part.

Q This word "none" written in this application in ink, you didn't write that, did you?

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A No, I didn't write nothing on there with ink.

Q And by number of children, it says, in parentheses, 20-6, did you write that?

A No.

Q Were your children at that time between the ages of six and twenty?

A Yes.

Mr. Finney: No further questions.

EXAMINATION BY MR. DEAKINS

Q Now Mrs. Burgess, this application, I believe we have already agreed is dated June 12th, 1966, and it is your testimony that this is the date you applied?

A At Campbell Soup.

Q Right. And you had never been out to Campbell Soup before that?

A No.

Q And none of the ink writing on the front page of defendants' exhibit number 7 is your writing?

A No, I didn't put any ink on there.

Q And next to the question, list any physical defects or serious illnesses, it is written in ink "none"?

A I didn't put that.

Q Is that correct?

A Read it again?

Q Do you have any physical defects or serious illnesses?

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A None as I know of.

Q All right, so the answer "none" is correct?

A But I didn't put that there.

Q And again, under the number of children, you have written in p encil "five," that is your writing?

A Yes.

Q And next to it in ink is 20-6?

A Yes.

Q And it is correct that your children are aged six to twenty?

A Yes, it was then.

Q Do you remember anybody at Campbell Soup Company asking you the ages of your children?

A He might, I don't remember. But I read on there, I mean, how many you had on there.

Q But do you remember when you were out at Campbell Soup Company, these several times you were out there --

A Oh, no, she didn't ask me that.

Q None, nobody out at Campbell Soup ever asked you the ages of your children?

A They might, I don't remember.

Q Could they have asked you that and you not remember?

A I might not remember.

Q Do you recall whether or not they asked you anything about whether or not you had any physical defects or serious illnesses?

A Well they might ask me, it is a long time.

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MISS CATHERINE PRESTON

was duly sworn and testified as follows:

EXAMINATION BY MR. DEAKINS

Q Would you state your name please?

A Catherine Preston.

Q Is that miss or mrs.?

A Miss.

Q All right Miss Preston, at any time have you ever filed an application for employment with Campbell Soup Company?

A Yes, sir.

Q All right, how many such applications have you filed with Campbell Soup Company?

A One.

Mr. Deakins: Iwill ask the Reporter to mark this document as defendants' exhibit number 8 for identification.

(Document referred to is received as defendants' exhibit 8 for identification)

Mr. Deakins: And also I ask that this postcard be marked as defendants' exhibit 9 for identification.

(Postcard referred to is received as defendants' exhibit 9 for identification)

Mr. Finney: If it is satisfactory with counsel, we will stipulate that defendants' exhibit number 9, the card was received by this plaintiff, on April 26th, 1966, from the Security Commission, and was addressed to Campbell Soup Company,

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to report to work.

Mr. Deakins: I can't agree that it is a notice to report for work.

Mr. Finney: Well, notice to report to Campbell.

Mr. Deakins: I will stipulate that this is a notice addressed to Catherine Preston from the South Carolina Employment Security Commission, and it speaks for itself.

Mr. Finney: All right, and it is stipulated that defendants' exhibit number 8 is an application for employment signed by Catherine Preston, and it is application for employment with Campbell Soup Company, dated April 26, 1966, and that she wrote everything on there except that written in ink.

Mr. Deakins: We could stipulate that this is her signature and this is the date she signed the application.

Mr. Finney: Right.

Q (By Mr. Deakins) Now Miss Preston, I would like to show you the document which has been marked for identification as defendants' exhibit number 8, which we have agreed is the application you filed with Campbell Soup Company. At the time you filed that application did you make out the application while you were out at the plant?

A No, sir, I didn't.

Q How did you go about filling out the application and turning it in?

A I filled it out at home.

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Q Did you go out to the plant and get it and take it home with you?

A No, sir.

Q Where did you get the application form?

A He send me these blanks through the mail, I get these through the mail.

Q Campbell Soup sent it to you through the mail?

A No, sir, the employment place.

Q Oh, they sent the application to you through the mail?

A Yes, sir.

Q After you had filled it out, did you personally take it out to Campbell Soup Company or mail it to them?

A I take it back there when they call me to take my test.

Q Now that would have been, would that have been the same date you filled out the application?

A No, sir.

Q The date that appears on this application, which is April 26, 1966, i that the date you went out to Campbell Soup Company?

A No, sir.

Q You went out there after that?

A I went out there before that, when I, apply for my job, last part of February.

Q You went to Campbell Soup Company in February?

A Yes, sir.

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Q Who did you talk to out there then?

A I don't ,now, it was a lady.

Q All right, and --

A That was at the employment place.

Q Oh, that was at the employment office?

A Yes, sir.

Q All right, that's fine. And at that time did the employment office give you this manual dexterity test?

A I signed up and we went back home and I get a blank, these blank and things. And then they call me to, for a test.

Q All right, who called you for the test?

A I don't know.

Q Did you go to the employment office to take the test?

A Yes, sir.

Q That is where they told you to come?

A Yes, sir.

Q Now at the time you went to the employment office to take this manual dexterity test, had you already filled out your application, which is identified as defendants' exhibit number 8?

A No, sir, I had not fill it out.

Q So you went to the employment office, signed up, then you were notified to come to the employment office and take the manual dexterity test?

A Yes, sir.

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Q And then they, did they furnish you with this card, which is defendants' exhibit number 9?

A They send me that card, I get it through the mail.

Q Was it after you received this card, which is defendants' exhibit number 9, that you then filed your application?

A After I take the test.

Q Then they furnished you with this card?

A Yes, sir.

Q And after you received this card you later filed your application, which is defendants' exhibit number 8, is that true?

A No, sir.

Q Did you file your application with the Campbell Soup Company before you received this postcard?

A I didn't.

Q You did not.

A No.

Q You filed your application with Campbell Soup Company after you received this card?

A I get the card after I filed my application.

Q So you filed your application before you received this postcard?

A That's right.

Q Now I m not sure I am clear. Did you file the application on the date that is shown on the application? Is that the day you took it out to Campbe l Soup?

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A I can't remember now.

Q Did you fill the application out on the same day you took it out there?

A No, sir.

Q How many days difference was it?

A I can't remember

Q Was it a matter of just a few days?

A I guess something like that, I don't remember.

Q All right. Then after you filed your application, then you received this postcard?

A Yes, sir.

Q And it says for you to report on 4, that would be April, no 26, 1966?

A Yes, sir.

Q All right, did you in fact go out to Campbell Soup Company on April 26, 1966?

A I went in April sometime, I don't know rightly what ti e it was but it was in April.

Q It was in April of 1966?

A That's right.

Q Now when you filed your application at Campbell Soup Company did you have any discussion with the person to whom you gave the application, this lady?

A No, sir.

Q Just turned in your application?

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A That's right.

Q There was no discussion?

A No, sir.

Q Well now when you turned in this application, was it out at the plant where it is now or somewhere else?

A It was at the employee place, where I signed up.

Q So you turned this application in at the Employment Security office?

A Yes, sir, this, I turn this in when I take, when I went to take my interview.

Q Where did you take your interview?

A At the Campbell Soup place.

Q At the plant?

A Yes, sir.

Q Which is out of town?

A Yes, sir.

Q And that is when you turned in your application?

A Yes, sir.

Q All right, and you were interviewed at the time?

A Yes, sir, I did.

Q Who interviewed you?

A It was a man.

Q Do you see that man in this room?

A I don't know but I believe that him there, the one with the glasses.

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Q All right, this is Mr. Dick Dwozdz, and you were interviewed then by the man who you thin is Mr. Gwoddz? Is that right?

A Yes, sir, I believe that is him.

Q And this interview occured at the plant?

A Yes, sir, that's right.

Q Tell me what your discussion was with this man?

A Well he asked me how many children I had and what my husband do and how many in the house with me, which one is the youngest and the oldest one, that was all.

Q Now you will notice on this application form, written in ink, where the statement is, printed statement is number of children, and you have written in 8 in pencil, is that your writing, the 8?

A He write that.

Q The 8?

A I believe he write that.

Q I thought you wrote everything on this application that is in pencil.

A I did.

Q All right, you wrote the number 8, that is the, next to the number of children?

A Yes, sir.

Q And then next to it in parentheses, is 26-14, now that is the age range of your children, is that right?

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A That's right.

Q And Mr. Gwozdz asked you what the age range was?

A Yes, sir.

Q Did he write that down?

A Yes, sir.

Q And then down under the column ---

Mr. Finney: I don't mean to interrupt you, counsellor, but whoever the man was.

Mr. Deakins: Right.

Q (By Mr. Deakins) On the column experience, on the front page, it is in ink, it is written domestic, did the man write that word down?

A I guess so.

Q Did he ask you what kind of work you had done previously?

A Yes, sir.

Q Did you tell him domestic?

A Yes.

Q Now are the statements that you wrote on this application form true and correct to the best of your knowledge?

A Yes, sir.

Q All right, tell me what your discussion was with this man, who we believe to be Mr. Gwozdx, other than your family status and what your husband did and so forth.

A Nothing more than, he tell me when the plant would open up.

Q What did he tell you about that?

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A He said it would open up about the second or third week in June, and they would send us a card, but he wouldn't be the one to hire me, it would be the boss man to hire me.

Q He said he would not be doingthe hiring himself?

A That's what he told me.

Q Did he indicate that before you could be hiredy you would have to be interviewed again?

A No, sir, he said we would have to be examindd by a doctor, he didn't say anything about no interview.

Q Well he said the boss would be the one that hired you?

A That is what he told me.

Q All right, do you recall anything else about the discussion?

A I don't remember anythin else.

Q Al l right, Now this meeting you had with the man we believe to be Mr. Gwozdz, was that the first time you ever met with any company representative about a job?

A Yes, sir.

Q Afteryou met this man on this occasion, did you ever have any further communication with the company? Did you ever go back out there?

A No, I didn't.

Q Did you ever phone out there again?

A No, I didn't.

Q When you talked to this man did you request any particular job?

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The answer is not intelligible.

Q Did Mr., this man you talked with, give you any indication that he didn't want your application to be filed, or that he didn't want you to file one?

A No, he didn't.

Q Or apply for work

A No.

Q Did he make any statements to you that it would be useless for you to apply for work out there?

A Yes, he did.

Q He said it would be useless?

A Yes, sir.

Q What did he say?

A I didn't quite get what you said.

Q Did the man you talked to tell you it was useless for you to apply for a job out there?'

A No, he didn't say that.

Q Have you ever been at any time refused permission to file an application with Campbell Soup Company?

A No, sir.

Q At any time you talked with this man, did he make any mention to you of your race?

A No, sir, he didn't.

Q Did he make any statement about your race in regard to, in any regard?

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A No.

Q And since that time you have had no communication with any representative of the company?

A No.

Q Have you ever at any time Mrs. Preston, worked for any company that isengaged in processing poultry?

A No, I didn't.

Q Have you ever worked in any type of plant?

A No.

Q Factory?

A No, I didn't.

Q What type of work have you done?

A Domestic work.

Q Is that the only type of work you have done?

A Yes, sir.

Q And approximately how long have you done that?

A Well, all my life.

Q For approximately how many different people?

A Well, about three or four I guess.

Q I don't suppose you had to take any sort of written test or anything?

A No, sir.

Q Have you ever applied for employment with any other, at any other plant in this area?

A No, I didn't.

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Q Campbell Soup is the only one?

A Only one.

Q What caused you to file an application for employment with Campbell Soup Company?

Mr. Rachlin: Objection, that is immaterial.

Q (By Mr. Deakins) But you have never applied at any other plant?

A No.

Q Were you referred to Campbell Soup by any other friends or relatives?

A No, I didn't.

Q Do you have any relatives who are working for Campbell Soup?

A No.

Q Have you ever had any relatives to work out there?

A No.

Q It is my understanding that you are, aren't you a relative of Carry Mae Daney?

A Yes, sir.

Q What is your relationship?

A In law.

Q Your sisterin law?

A That's right.

Q I noticke on your application, which is defendants' exhibit number 8, you say, the question is asked, what relatives do you have in our employ, and the answer is Carrie Mae Daney. To your knowledge has Mrs. Daney ever been employed by Campbell

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Soup Company?

A No, sir.

Q Have you ever had any other relatives that have applied for employment out there?

A No, sir, I don't.

Q Do you have any friends that work there?

A No, I don't.

Q Have you ever been arrested?

A No.

Q Were you given, you were given the manual dexterity test at the employment office?

A That is what they call the hand test?

Q Yes.

A Yes.

Q That is where you work with the washers and put the little pegs in the holes?

A Yes, sir.

Q And were you given that test with a group of other people?

A Yes, sir.

Q And you were timed, you were only given a certain amount of time to complete the test?

A Yes.

Q And it was after that that you received this postcard asking you to report to Campbell Soup Company?

A Yes, sir.

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Q Miss Preston, do you consider that the manual dexterity test was given to you in an unfair way?

A What you mean, you speaking about the hand?

Q Yes.

A No, that is the one I take.

Q Was it given to you fairly? You have no objection to the way it was given to you?

A No, I don't.

Q To your knowledge were there any representatives of Campbell Soup present when you were given this test?

A I really don't know.

Q Any of the people, was there just one person giving you the test?

A It was a man and a woman.

Q Have you ever seen that man or woman at Campbell Soup Company?

A No, I didn't.

Q You never have taken the manual dexterity test at Campbell Soup plant?

A No.

Q How old are you?

A Thirty-eight. (Forty-eight?)

Q And what is your birthday?

A May 2nd.

Q Have you ever, I show you a document which has been marked

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defendants' exhibit number 3 for identification. And I ask you whether or not you ever hade been given such a test as that.

A No, I didn't.

Q Were you ever given any type of a written test by Campbell Soup Company?

A No, not any.

Q Is it correct that the only thing you have ever filled out out there was the application form?

A That's right.

Q Have you ever been given any instructions by anyone as to how to complete this Wonderlic test?

A No, I didn't.

Q How many years of schooling have you had?

A Eighth grade7.

Q I notice, referring to defendants' exhibit number 8, which is your application, I notice that at the bottom of the front page, under education, under the column highest grade completed, it has 7.

A Well I just promoted to the eighth, I didn't finish.

Q Well do you know who wrote in "7"? Was that you or the man you were talking to that wrote that in?

A I don't remember now.

Q So it is correct that the highest grade you have completed was the seventh grade?

A That's right.

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Q- And where did you attend school?

A Piper's Fork (?)

Q Is it a public school?

A Yes.

Q Did you ever faill any grqdes or did you advance one grade each year?

A Yes.

Q Yes, what?

A I did, every year.

Q You advanced every year?

A Yes.

Q Did you take such courses as arithmatic?

A Yes, I did.

Q And English?

A Yes.

Q Writing and reading?

A Yes.

Q During your public school were you given written tests at various times and of various kinds?

A Yes.

Q Were you ever given any physical examination in support of your application for employment at Campbell Soup Company?

ANo, I didn't.

Q Have you ever at any time , Mrs. Preston, received a job by referral from the South Carolina Employment Security C mmission?

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A No, I didn't.

Q Have you ever received a job through any employment agency of any kind, State, Federal or private?

A I don't remember.

Q Did you ever file any charge or any other type document with the Equal Employment Opportunity Commission against Campbell Soup Company?

A Yes, I did.

Q Do you recall approximately when it was that you filed this?

A I can't remember that.

Q Did you personally file it with the Equal Employment Opportunity Commission?

A I think I did.

Q Who did you file it with?

A I can't remember now.

Q Did you sign it?

A Yes, I did.

Mr. Finney: May I interpose here another objection to charges filed with the EEOC, on the ground that any charges filed would be on file with them, and they would at the request of the plaintiff company furnish us a copy, and this is burther based upon the fact that we have now discovered that the original of the purported charge document is in the hands of the defendant.

Mr. :Deakins: Will you stipulate that it is in my hands?

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Mr. Finney: Well I don't know. That document is in your hands. We will stipulate that.

Q (By Mr. Deakins) Do you recall where you were when you signed this charge?

A I can't remember.

Q You don't have any idea where you were?

A No, sir.

Q Were you asked by anyone if you wanted to sign this charge?

A No. I didn't.

Q Well, tell me the circumstances under which you did sign.

A Well I just thought I might get hired.

Q Did someone tell you you would be hired if you signed it?

A No, sir, no one tell me.

Q Who wrote up the document?

A I don't remember.

Q Did you read the document before you signed it?

A I kind of sketch over it but I forgot everything I read.

Q Was it read to you by someone?

A No.

Q At the time that you signed this charge, do you know Mrs. Dorothy V. Sampson, the lawyer?

A I saw her once. I don't know her.

Q You know who she is?

A Yes, they tell me who she was, I don't know her.

Q Have you ever seen her?

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A Once.

Q So you know who she is, if you saw her walking down the street?

A I doubt it.

Q Was Mrs. Dorothy Sampson present when you signed this charge?

A She might have been, I can't remember.

Q Do you have any recollection of anyone that was present when you signed this charge?

A No, I don't.

Q Did yo, what did you do with the charge when you signed it?

A I can't remember.

Q Were you in Sumter when you signed it?

A Yes.

Q All right, did you take that charge from Sumter anywhere else to file it?

A I didn't.

Q After you signed the charge did you keep the charge yourself?

A No, I didn't.

Q Who did you give it to?

A Left it on the table.

Q Pardon?

A Left it on the table, didn't give it to anyone.

Q You signed the charge and left it on the table?

A Right.

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Q Did you authorize anyone to file that charge on your behalf?

A I didn't, I do my own, I sign it on my own.

Q All right, you voluntarily signed it?

A Right.

Q And left it on the table?

A Right.

Q Did you ever tell anyone that they were authorized to file this charge with the Equal Employment Opportunity Commission on your behalf?

A I didn't.

Q Do you know what happened to that charge after you left it on the table?

A I didn't.

Mr. Deakins: I ask the Reporter to mark this document as defendants' exhibit number 10 for identification, two pages.

(Document referred to is received as defendants' Exhibit 10 for identification. Two pages marked as exhibit number 10)

Q (By Mr. Deakins) ---

Mr. Finney: We would object to the use of this document in any form, without a showing it was received or acted upon by EEOC. We further object to its admission or its use in any form, since the document on its face refers to it being a three page document, and we would point out for the record that

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the document is unsworn to.

Mr. Deakins: We will stipulate that it is unsworn. Is that stipulated?

Mr. Finney: Yes, we will stipulate that.

Q (By Mr. Deakins) I would like to show you a two page document which has been identified as defendants' exhibit number 10, and ask you to look over that two page document.

Mr. Deakins: I would like to further stipulate with counsel that the document which is identified as defendants' exhibit number 6 is a Xerox copy of the two page document which has been identified as defendants' exhibit number 10.

Mr. Finney: I have not had a change to see it but we will stipulate subject to any objections that I may have and let them run through the examination.

Q (By Mr. Deakins) Have you had an opportunity to examine the document marked defendants' exhibit 10? Have you looked at it?

A Yes, I looked at it.

Q Can you identify that document?

A You talking about some of these names on here?

Q Can you identify the document?

A I can't.

Q Have you ever seen the document before?

A I guess I did.

Q What causes you to say that?

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A My signature.

Q Does your signature appear on the second page of that document?

A That's right.

Q Is that your actual signature, did you sign it?

A That's right.

Q Did you put in the address next to it?

A It don't look like my signature, not this right there.

Q The address doesn't look like your writing?

A That's right.

Q The signature is your writing?

A Yes.

Q Is that the signature that you wrote when you were filing the charge?

A That's right.

Q All right, you wrote your signature on the second page of the defendants' exhibit 10 and layed it on the table and left it?

A That's right.

Q All right, now at the time that you signed your name to the second page of the defendants' exhibit 10, as identified, do you recall how many pages that document was?

A I can't remember.

Q Do you remember whether the page your signed was the first page, or the second page or what?

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A I don't remember now.

Q All right, in looking at the other signatures that appear on this document, does that refresh your recollection as to who was present when you signed it?

A I can't remember.

Q Did you look at thosle names?

A Yes, I did.

Q Do you know any of the people who signed that document, whose names appear on the document?

A Only two.

Q All right, and who were they?

A Carrie Mae Daney and Ethel Mae Burgess.

Q Were those two persons present when you signed your name to this charge?

A They were.

Q Did they sign the document in your presence?

A I really don't know.

Q You will notice that on the second page of defendants' exhibit number 10 appears the date October4, 1966?

A Yes.

Q Is that approximately the date that you signed this?

A I don't know, I forgot.

Q Do you recall what year it was that you signed this document?

A 1966.

Q Do you recall that it was in the fall?

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A I think it was, I don't remember.

Q Would it have been in October?

Mr. Finney: To save time we will stipulate that this document was signed in October of 1966.

Mr. Deakins: Will you stipulate that this witness signed this document on October 4th, 1966?

Mr. Dinney: No, we don't know, we can't verify the date, but we have that it was in October. We will just say sometime in October.

Mr. Deakins: All right, I will stipulate that sometime in October, during the month of October, 1966, Catherine Preston signed the second page of defendants' exhibit number 10.

Mr. Finney: Signed a page.

Mr. Deakins: Well, what is the second page?

Mr. Rachlin: Of course we are not stipulating as to the significance of this document. We don't want any misunderstanding.

Mr. Deakins: We can stipulate that this was the entire document?

Mr. Finney: No, I have never seen it.

Mr. Deakins: Would you stipulate that page number 1 was on the document that she signed, when she signed it?

Mr. Finney: This part here? Yes.

Mr. Deakins: Can we make that stiuplation apply to the witnesses who have already testified concerning signing?

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Mr. Finney: That they signed page number 2 of this document.

Mr. Rachlin: The problem is that there are obviously several stapling marks on here and I am quite certain you didn't make those marks, nor did you take them out. So we don't know what is missing and what is not. None of us know that.

Mr. Deakins: I am not asking you to stipulate anything you don't know, but is there any way you can talk with your clients and find out whether page number 1 ---

Mr. Rachlin: We will stipulate they signed the document, a page of the document.

Mr. Deakins: Well, if you can reasonably satisfy yourselves that this is the actual document I would like to stipulate the whole thing, if in talking to your people you can do so.

Mr. Rachlin: What do you want to stipulate?

Mr. Deakins: I would like to stipulate that this is the w hole document, I am asking you to visit with your clients sometime to see whether or not it is.

Mr. Finney: There are numerous marks, none of us know who put these marks and when they were put there.

Q (By Mr. Deakins) At the time you signed your name to this charge do you recall any of the statements that were made in that charge against Campbell Soup Company?

A I can't.

Q Do you recall whether or not the charge said anything about

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discrimination by the South Carolina Employment Security Commission?

A I don't remember.

Q Did you at the time that you signed this charge, have any complaints of discrimination against the South Carolina Employment Security Commission?

A No.

Q They did not, you did not consider that the South Carolina Employment Security Commission discriminated against you or treated you unfairly in any way in the handling of your efforts to get a job?

A You are speaking about the plant?

Q No, I am speaking about the South Carolina Employment Security Commission.

A No, I don't think so.

Q Now aside from this charge that you signed sometime in the fall of 1966, and I think we stipulated October of 1966, aside from that, have you filed any other charge or other document with the EEOC?

A No, I didn't.

Q Now is it your position Mrs. Preston, or is it your claim that Campbell Soup Company has discriminated against you?

A Yes.

Q What do you say in support of that claim?

A Well that test what they put out, the last written test, that is against us.

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Q This is the Wonderlic test which is identified as defendants' exhibit number 3?

A Yes, that one.

Q You claim that is the reason for discrimination?

A And our race.

Q And your race, that is something different than the test?

A That is another reason why we didn't get no jobs.

Q Why do you feel like you have been discriminated against because of your race?

A Well because I am colored, and they hire more white there than they did colored.

Q You know that of youf own knowledge?

A Sure.

Q How do you know that.

Mr. Rachlin: I object to the question, it is improper, it is cross examination.

Mr. Deakins: I am asking for this witness's information.

Mr. Rachlin: Well, that is cross examination.

Mr. Deakins: I am asking her what her claim is.

Q (By Mr. Deakins) Is it your position that you have been discriminated against by Campbell Soup Company?

A Yes.

Q What are the reasons you feel you have been discriminated against?

A The same test here.

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Q The Wonderlic test?

A Yes, this same test right here.

Q Which is defendants' Exhibit number 3, that is the reason you have been discriminated against?

A Yes.

Q Any other reason besides the test?

Mr. Rachlin: She has already answered that question previously.

Mr. Deakins: I am asking her again.

Mr. Rachlin: You have not got the right to ask her again.

Mr. Deakins: I have not gotten a clear answer.

Q (By Mr. Deakins) Aside from the test are there other reasons why you have been discriminated against by Campbell Soup Company?

A It is only two, the test and my race, them the only two I have.

Q All right, what causes you to believe you have been discriminated against because of your race?

A Because this test here, the colored people couldn't even, I couldn't answer those questions on there, I know.

Q Is that the reason you have been discriminated against, because of your race?

A I think that what it is, that keeps out people out of there, I think that what it is.

Q Is there any other reason you feel you have been discriminated

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against because of your race?

A Well I think that's all, them two.

Q You feel like you have been discriminated against on your race because of the test?

A That's right.

Q Any other reason?

A That's the only two I have.

Q Why do you feel that the test discriminates against you?

A Because we don't get that kind of education, you don't have tests to go to school like that.

Q Have you ever taken the Wonderlic test?

A You are speaking about the hand test?

A No, the Wonderlic test, at the plant.

A No, I have never take that, they didn't call me to take it.

Q Well is that the test you are saying is discriminatory?

A Yes.

Q You are not saying that the manual dexterity test is discriminatory?

A No, sir, this the one.

Q The Wonderlic test?

A Yes.

Q Have you ever taken the Wonderlic test?

A I didn't.

Q Any other reason you feel like Campbell Soup Company has discriminated against you?

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A I can't remember any more, I think that's all.

Q Do you know any employees, employed by Campbell Soup Company?

A No, I don t.

Q You know any person who has previously been employed by Campbell Soup Company?

A I know one.

Q Who is that?

A Johnny McFadden.

Q All right, is he employed there now?

A He is still working there.

Q It is a he, a male?

A A male.

Q Is he a negro?

A Yes.

Q You know anyone else that has worked at Campbell?

A Mr. Milroy McCants.

Q Is he still working there?

A Yes.

Q Is he a negro?

A Yes.

Q Do you know anyone else that is working out there?

A No, I don't.

Mr. Deakins: No further questions.

EXAMINATION BY MR. FINNEY

Q Mrs. Preston, on your application, now you filed your

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application with the Employment Security Commission?

A Yes.

Q Did you tell them what kind of job you wanted, or did you just say any kind?

Mr. Deakins: We object to any question about the form of application she signed, or filed with the South Carolina Employment Security Commission.

Q (By Mr. Finney) Did you tell them you wanted a specific job?

A Yes, as a boner.

Q You told them down at the employment office you wanted a job as a boner?

A Yes.

Q Are you married?

A Yes.

Q When you were going to school, about how many months of the year, when did you start school, do you remember?

A Well I, we pick all the cotton out the field, before we start. Must be in October I guess.

Q When did the school session end?

A- In March.

Q Did all the schods, the school you went to, all negroes went to your school?

A Yes.

Q Do you know about the white schools in the county you went

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to school in, did you see the white children going to school?

A Yes.

Q Did they start school before you did?

A Yes.

Q When did they start?

A I can't remember now.

Q Did you ever see them while you were picking cotton, going to school?

A Yes.

Q And your school term did not begin when theirs began?

A No.

Q And your school term ended before theirs did?

A That's right.

Q Subject to my previous objection, when you signed this charge against Campbell Soup Company, you expected them to be filed with the EEOc, didn't you?

A Yes.

Mr. Deakins: I object to what she expected.

Q (By Mr. Finney) Do you know what a technical education center is?

A I been by there once.

Q Did you go by there and talk to somebody from Campbell Soup?

A No.

Q You didn't go to the Technical Education Center to talk about a job?

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A I don't think I did.

Q When you had the conversation with this man who wore glasses, did he tell you anything about when you could come in?

A He told me they would open up about the second or third week in June, I think.

Q Did he imply to you then, or say to you then, what would happen?

Mr. Deakins: We object to the form of the question.

A He said, he wouldn't be the one to hire us, the boasman would hire us.

Q Did he tell you what you would get?

A Yes.

Q And that you could expect to come to work in June?

A That's right.

Q So when you put on your application that Campbell Soup had Mrs. Carrie Mae Daney in its employ, did you think you were already employed by Campbell Soup?

A That what I thought

Q And you got that idea from talking with this man?

A Yes.

Q Have you heard or read that Campbell Soup has a seventh grade requirement for working out there now?

A No, I don't.

Q You don't know what the education requirement is?

A No.

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Mr. Finney: Nothing further.

EXAMINATION BY MR. DEAKINS

Q This man with the glasses that you talked to at Campbell Soup Company, he said you would have to talk to the boss before you would be hired?

A He say the boss would hire me.

Q And he told you that he couldn't hire you?

A That's right.

Q Did you ever attempt to enroll in the white school you have been telling us about?

A No, sir. VIRGINIA

MRS. ~~XXXXX~~ BURGESS

was duly sworn and testified as follows:

EXAMINATION BY MR. DEAKINS

Q Miss Burgess, will you state your name please?

A Virginia Burgess.

Q Is it mrs. or miss?

A Mistress.

Q You are married?

A That's right.

Q Have you ever filed a written application for employment with Campbell Soup Company here in Sumter?

A Yes.

Q How many applications have you filed with Campbell Soup?

A I fill out an application at the employment office but I

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never heard from that and I went to Guignard Drive to check it, and I fill one out there.

Q So you did file one at the plant?

A That's right.

Q Now as to the application you filed with the South Carolina Employment Security Commission, did you leave that application down at the employment office?

A I left it there.

Q You didn't deliver it to Campbell So p Company?

A No, I didn't.

Mr. Deakins: I will ask the Reporter to mark this document as defendants' exhibit number 11 for identification.

(Document referred to is received as defendants' Exhibit 11 for identification)

Mr. Deakins: I will ask the Reporter to mark this document as defendants' exhibit 12 for identification.

(Postcard referred to is received as defendants' exhibit 12 for identification.

Q (By Mr. Deakins) Now Mrs. Burgess, before you filed your application out at the plant, had you been given a manual dexterity test, or finger test, by the employment agency?

A Yes.

Q And before you filed your application for employment had you received a postcard from the employment agency telling you that you should go out to Campbell Soup Company?

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A Before I, um, receive, um, repeat that question again.
Q Did you receive a postcard from the employment agency, asking you to go to Campbell Soup Company, before you filed your application at Campbell Soup?
A No, I didn't.
Q I would like to show you a document marked for identification as defendants' exhibit number 11, and ask you to look that over. Have you had an opportunity to look over devendants' exhibit number 11, this paper?
A Yes, I looked at it.
Q Is that the application you filed with Campbell Soup Company?
A Yes.
Q All right, does the signature on the reverse side of this document, Mrs. Virginia B. Burgess, is that your signature?
A That isP, Virginia P. Burgess.
Q The date that appears on the front side, which is 3-8-66, which would be March 8th, 1966, did you write that in?
A Yes, I did.
Q Is that the correct date? That you filed this application?
A Yes.
Q You notice in the far lefthand corner appears the word "fair" in pencil, underligned?
A Yes.
Q Did you write that on there?
A No, I didn't.

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QNow at the time you filed this application with Campbell Soup Company, did you have any discussion with anyone from the company?

A No, I didn't.

Q You just t rned it in?

A I turned it in.

Q You will notice on this document --

A Pardon me, the day I filled that out, after I fill it out, they sent us back out in the haul to wait and called us in one by one.

Q So you were then called in by yourself?

A Yes.

Q Who did you talk with?

A I talked with Mr. Partin.

Q Mr. Wayne Partin?

A Yes, sir.

Q Who is sitting here in the room?

A Yes.

Mr. Deakins: May we stipulate this is Mr. Wayne Partin here (indicating)?

Mr. Finney: Yes, sir.

Q (By Mr. Deakins) At the time Mr. Partin called you, interviewed you, did he go over the application with you and ask you about it?

A He was looking it it, I wasn't looking at it, he was looking,

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he had it in ~~xnx~~ his hand and was just talking with me, asking me different questions.

Q All right, you will notice on the first page of this application the words are circled "prefer second"?

A Yes, sir.

Q Did he ask you anything about which shift you would prefer?

A Yes, he did.

Q You told him you would prefer the second shift?

A Yes.

Q Is this your writing, in the column dealing with experience, on the first page?

A No, it is not.

Q Did Mr. Partin ask you questions about your previous experience?

A Yes, he did.

Q He asked you who you worked for?

A Yes.

Q And what you did?

A Yes.

Q And the years in which you were employed?

A Yes, and --

Q And how much you made?

A Yes, he di.

Q Was he writing things down as he talked to you?

A Well I don't know whether he was writing or just pretending,

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what he was doing I didn't pay attention.

Q Did you tell Mr. Partin you worked on, at Big Jim's?

A Yes, I did.

Q As a kitchen helper?

A Yes.

Q In 1960 and 1961?

A Somewhere aroundthere.

Q And you told him you made $17.61.

A I told him some cent, I couldn't remember exact the penny, but I know it was $17.60 something cents, and I guess he put it down some cent.

Q Now Mrs. Burgess, all of the writing on this form, defendants' exhibit number 11, which is done in blue ink, with the exception of the writing in the far righthand corner, which the Reporter has put in, is all the other blue ink wriging yours?

A Yes, it is.

Q On both sides?

A Yes.

Q Have, at the statements that you made on this application true and correct to the best of your knowledge?

A Yes.

Q Can you tell me any more about what your discussion was with Mr. Partin when he interviewed you about this application?

A He asked me for one thing, he asked me why I worked so many places, and I told him so much work to do, it wasn't

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enough money in it, and he told me he didn't blame me for stopping work at Big Jim's, because it was too many hours for the little bit of money.

Q All right, what else did he ask you?

A And he asked me why I applied at Campbell Soup. I told him I was trying to better my condition if I could.

Q What did he say to that.

A And he said that he hoped that I could better it by getting a job at Campbell when the plant do open, but he couldn't promise me anything, but when I got that paper back with that yellow slip, paper there what you got in your hand, he told me I passed that, and he said he pretty sure that I might would be in the first gropp that they called but he don't know what time the plant would open up. He said it would be around the 15th, if, um, of August or September, and I would get a notice in the mail but I never did got a notice in the mail concerning anything else about it.

Q Now at the time you filed your application with Campbell Soup Company, you had not gotten this postcard from the employment agency?

A No.

Q Now at any time in your discussions with Mr. Partin, when you filed your application and he interviewed you, was any mention made about your race?

A No, not at that time.

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Q After your interview with Mr. Partin did you ever go back out to Campbell Soup Company or have any other discussions with anybody from Campbell Soup?

A Well I called out there a couple of times, but I don't k now who I talked to, all I know it was a lady, ever time I called I say I want to speak to Mr. Partin to talk to him about what he told me at Tec, and she would say he was busy or he was out and he would be back and to call back again, and every time I called I never did could catch him.

Q Did you ever leave word?

A es, I did, but I never did got it so I made a trip out there just only once and I get a chance to talk to him that time.

Q What, when was that?

A Sometime last year, but what time I don't know.

Q You asked to see Mr. Partin?

A Yes.

Q And what did they say?

A He talked to me about one minute, and he said he was sorry with the things what was hapenning, but he couldn't do anything about it.

Q What things did he mean?

A I don't what things he meant, I didn't even go into that. He said he was sorry about the things that was happening, and he couldn't do a bit more than what he was doing now, the

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position that he was in, and, but what position he was in I really didn't know.

Q Did you say anything?

A I said well you told me about the opening, what time the plant would open, and what hight happen, and he said he wasn't doing any hiring.

Q Anything else.

A And to come back probably some other time, and maybe I might could get on, and I didn't ever go back. I called back once or twice, and they still wasn't doing no hiring.

Q Did you talk to Mr. Parton on any of these other times?

A I talked to a lady in the office, but I didn't know her name.

Q Did you ask about openings, if they had any openings?

A She said they didn't have any openings, she asked what I called for, and I told her concerning about a job, and she said I am sorry, they didn't have any opening, and hang right up, didn't give me a chance to say anything else.

Q All right. Now the first time then that you talked to Mr. Partin, had you filed your application?

A Yes.

Q That would not have been out at the plant?

A It was at Tech, on Guignard Drive, and he talked to me a long time --

Q Where is Tec?

A On Guignard Drive.

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Mr. Finney: Sumter Area Technical Education Center.

Q (By Mr. Deakins) All right, the next time you talked to Mr. Partin, you talked to him at the plant?

A That's right.

Q Where were you, did you go in his office?

A I go into a little private room, I guess it been a private r oom, nobody in there but me and him, and I didn't stay no more than a minute.

Q And he told you at that time he was doing all he could?

A He was doing all that he could.

Q Did he explain to you what that was?

A No, I didn't even ask him

Q Did you ask him about a job at that time?

A I asked him for a job, when I went, and take that thing back, he said probably, when the plant open up I would be in the first group, probably.

Q No, I am talking about the second time you went out and talked to me. Partin, did you ask him for a job at that time?

A I told him I come to talk to him about a job.

Q And what did he say to that?

A He said he was sorry, it wasn't no opening at the time.

Q What else did he say?

A Well I told him, I say you said that the plant would open up around the 15th and I would get a call, I said I never heard from it, and I said I called a couple of times and I

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neve could catch you or talk to you, you was busy or either just left to go to lunch or something like that, and he told me to call back and call back and I never could catbh you and I decided to come and see you, and he said he was sorry, he was doing all he could, he didn't have no more openings at the time.

Q What else did he say?

A That was about all. When he said that I just get up and left, and he told me there wasn't nothing else for me to do.

Q I thouht you said he said something about he couldn't do anything about this thing?

A Well he said he was doing all he could, he said the position I am in right now I can't do any more, but what he meant by that I don't know.

Q What was his statement in that regard, about this thing?

A He just said the position I am in right now I can't do any more, what he meant by that I really don't know.

Q Did he make that statement in connection with telling you that he didn't have any opening?

A It was no opening.

Q There was nothing mentioned in that conversation with Mr. Partin about your race?

A No.

Q Was anything mentioned about filing charges against the company, or anything?

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A No, I didn't.

Q At the time you filed your application for employment did you ask for any particular job?

A I asked for any position that I could get, because I needed the work.

Q Did Mr. Partin or any of the ladys you talked to on the telephone at Campbell Soup Company ever say anything to you to the effectit would be useless for you to attempt to get a job out there?

A No, sir.

Q Did any of them ever make any statement to you to the effect that your race would have anything to do with your getting a job out there?

A No, I never have talk on that subject.

Q Have you ever worked for any company that has been engaged in th processing of poultry?

A No, I haven't.

Q Have you wroekd, ever worked in any type of plant or factory?

A No, I have not.

Q Have you ever applied for a job at any other plant or factory other than Campbell Soup Company?

A Yes, I did.

Q What plant was that?

A That was at Pettibell, Pioneer Dress Shop, across the railroad track.

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Q Did you file an application out there?
A Yes, Idid.
Q Were you given any sort of test?
A No, I wasn't.
Q Were you ever offered a job out there?
A No, they never offered me one, just keep telling me to come back or wait a round to see if any opening, and I did that for about three months, straight in a row, every morning, and I sit there for about a hour, and I finally, the lady would come out and say I am sorry, no opening today.
Q Have you ever filed any unfair employment practice chagges against that company?
A No, I didn't.
Mr. Rachlin: Objection.
Q (By Mr. Deakins) Do you claim to have been discriminated against by that company?
Mr. Rachlin: Objection.
Q (By Mr. Deakins) Because of your race?
A Well they never did give me a job, so I guess they did, because I know it was plenty of opening.
Q Has anyone at Campbell Soup Company ever told you you would not be permitted to file an application for employment out there?
A No.
Q Now, I would like to show you a document which has been marked for identification as defendants' exhibit number 12,

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and ask you if you can identify that.

A Yes.

Q What is that?

A That says Campbell Soup Company, Sumter, South Carolina, that what you are talking about?

Q That is a postcard?

A Yes.

Q Who did you receive that from?

A got this from, um, I don't know where they sent it from, but I got it in the mail. I, attach to a white sheet of paper and told me to take this back to Tec.

Q Had you received that postcard, which is defendants' exhibit number 12, before you filed your application with Mr. Partin?

A No, sir.

Q It was after?

A After.

Q All right, now after, when you received this postcard, which is defendants' exhibit number 12, did you communicate with the company?

A Yes.

Q Who did you talk with?

A I mean I called out there and talked to the lady in the office, after I received this.

Q What did you tell her?

A I just told her I called to see about a job, because I

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had a card saying I passed some kind of test at the employment office, and what position they had me in, and if they had any opening in that position, and she said no, every time.

Q All right, did the lady explain to you that the card meant?

A No, she didn't.

Q Did she say anything abount this card meaning you passed the manual dexterity test?

A No, she didn't.

Q Do you have any relatives who were employed by Campbell Soup Company?

A No, I don't.

Q Have any friends there?

A No, not that I know of.

Q Are you kin to any of these other plaintiffs in this case?

A No.

Q You are not kin to Ethel Mae Burgess?

A No.

Q Or Sallie Burgess?

A No, they only have Burgess, but it is two different Burgess.

Q Do you have any friends working at Campbell Soup Company?

A No, I don't.

Q Have you ever been arrested?

A No.

Q Were you given the manual dexterity test at the employment office?

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A Yes, that hand test.

Q You were given the manual dexterity test?

A I was given that.

Q That is the one that you deal with the washers and put the pegs in the holes?

A Yes, it was almost impossible to pick up they, they were so tiny and small.

Q All right, now at the time you were given that test along with other people?

A Yes.

Q And you were timed, given a certain amount of time?

A Yes, we was timed.

Q Was it then shortly after you took this manual dexterity test that you received this postcard, defendants' exhibit number 12?

A Yes.

Q Do you claim that you were handled unfairly in any way in taking the manual dexterity test, the finger test?

A No, I didn't see where that test consist of the work that they have to do.

Q Do you think you were, it was fairly administered to you?

A Yes, it was fair.

Q Were you advised by the employment agency you had passed the test?

A The card, they didn't told me anything, they said they

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would let me know in a couple of days, whether we passed or not, and the ones that passed would receive a card, and the ones that didn't, wouldn't receive a card.

Q Is that the only time you have ever taken a manual dexterity test?

A Yes.

Q They have not ever given you one of these tests at the plant?

A No.

Q Was there just one person that gave you this manual dexterity test?

A The man give it to us in the back, what gave us the pegs, and the lady give it to us in the front with the little washers.

Q Have you ever seen any one from Campbell Soup Company there?

A No.

Q Was any person you knowto be a representative of Campbell Soup Company present when you took the test?

A No, I don't.

Q How old are you?

A Thirty-three.

Q What is your birthday?

A January 22, 1934.

Q Were you ever given a test by Campbell Soup Company such as defendants' exhibit number 3?

A No, I haven't

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Q This is entitled the Wonderlic Personnel test, defendants' exhibit number 3.

A I didn't have a chance to take that.

Q Have you ever taken that in support of any application at any other plant?

A No, I haven't.

Q Did anyone, not only Campbell Soup people, but anyone, ever give you any instructions as to how to answer the questions on the Wonderlic test?

A No.

Q How many years of schooling have you had?

A Eighth grade.

Q All right, I will ask you to look at your employment application, which is defendants' exhibit number 11, and you will notice on the front page on the bottom where it says education?

A Yes.

Q And it asks the question, highest grade completed?

A Yes.

Q And you put, is that your writing, 10th?

A Yes, that my writing.

Q Well is that a false statemen ?

A I see that on there but during the time I was taking the test, it was a couple of more people in there talking about grades, and I guess that how it get mixed up with mine.

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Q I am sorry, I didn't understand you.
A I say it was a group of us talking at the time, and talking about the grades, and I say, you see I marked one down there and scratched that out and put that one down there through mistake.
Q Isn't what you marked out 10th?
A Yes.
Q Now what grade were you all talking about?
A Each person was talking about the grade.
Q What kind of grade, you mean grade at school?
A That's right
Q And you were confused
A Yes, that's right.
Q How were you confused?
A Everybody talking about the grade and we writing and wasn't looking what we putting down, I know what I was putting down, but I thought I had it on there right.
Q What did you think you were putting down?
A 8th.
Q Did you complete the 8th grade?
A I started in the 8th grade but I didn't complete it.
Q So you completed actually only seven years of school?
A That's right.
Q Started the eighth but didn't finish it?
A That' right.

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Q Did you progress from one grade to another every year you were in school?

A Yes, the short time I had to go.

Q You never did flunk a grade?

A No.

Q What school did you attend?

A Cades High School, Cades, South Carolina.

Q During the time you were in school, did you take courses in arithmatic?

A Yes.

Q English?

A Yes,

Q Writing?

A Yes.

Q Reading?

A Yes.

Q Now it is not true that you have completed the tenth grade of school?

A No.

Q Have you ever called it to the attention of any representa-time of Campbell Soup Company, that you were wrong in your application in putting tenth grade?

A No.

Q In talking with Mr. Partin, when he went over your application with you, you remember?

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A Yes.

Q Did you make any statement to him to the effect that the tenth grade education that you put on your application was not correct?

A No.

Q So far, as far as you are concerned Mr. Partin nor no representative of Campbell Soup Company would have any way of knowing that your statement of tenth grade on your application was false?

A No.

Q Now have you ever been given a physical examination in support of your application at Campbell Soup?

A No, I haven't.

Q Have you ever taken any tests in support of your application at Campbell Soup Company, besides the manual dexterity test?

A No, I haven't.

Q Otherwise the only thing you filled in was your application?

A Yes

Q Now when you first signed up and filled the application with the South Carolina Employment Security Commission, did you ask to be referred to Campbell Soup Company?

A I asked for application for Exide Batter, but they told me they had no opening out there for ladies, that they would give me one for Campbell Soup, and I accept that one.

Q Have you ever received any sort of disability payments for

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any kind of injury?

A No.

Q Have you ever filed any type of charges against Campbell Soup Company, with the Equal Employment Opportunity Commission?

A Repeat that again, I didn't understand you.

Q Have you ever filed any sort of charge, complianing of discrimination by Campbell Soup Company, with the Equal Empboyment Opportunity Commission?

A Yes, I signed something, a complaint.

Q Complaining about Campbell Soup?

A Yes, sir.

Q Do you recall approximately when that was that you signed it?

A Sometime of last year.

Q In 1966?

A Yes.

Q Would it have been in the fall?

A I guess so, sometime around that time, I can't remember the date or the month or what, sometime the last of last year sometime.

Q All right, now is this something that you signed?

A Yes.

Q Did you sign something at that time?

A Yes.

Q I would like to show you what has been marked for identification as defendants' exhibit number 10, and ask you to look

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that over, both pages.

Mr. Finney: Note that our objection runs throughout this.

Q (By Mr. Deakins) Can you identify that document for me?

A I canidentify my name.

Q Does your signature appear on the second page of that document?

A Yes.

Q And your address?

A Yes.

Q Did you write your address on there?

A Yes, I did.

Q Is this what you signed, when you say you signed the charge, complaint against Campbell Soup Company?

A Yes.

Q Now at the time you signed it was the first page of this exhibit attached?

A As far as I can remember, I can't remember whether this was on there or this, but I remember I signed this, because I know this my signature.

Q You know you signed the second page?

A Yes, I did, I don't know whether this was the first or the second when I signed it.

Q Well do you recall that at the time you signed it there was more than one page?

A I don't know whether it was more than one or this one was

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turned over like this, and all I had to do was write on this. I didn't pay attention to see whether it was one or two.

Q What did you think you were signing?

A My name and address.

Q For what purpose?

A The purpose that I had, to file a complaint.

Q Well did you read any complaint that had been written up?

A I read mine.

Q Well is that yours, the first page of this exhibit, is that your complaint? Is that what you read before you signed the second page?

A I didn't read, I just signed.

Q You signed the second page of that exhibit without knowing what you were signing?

A Yes, I know what I was signing when I sign this, and I knowed what I,um, sign, whenI, I sign my complaint.

Q Well is the first page of that exhibit your complaint?

A Yes, it is.

Q All right, you read the first page of that exhbit before you signed your name?

A I don't remember whether I read this and sign my name both at the same time or not, I can't remember that.

Q Well in the same meeting, you read the first page of that exhibit and you signed the second page, is that correct?

A Explain that again?

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Q Did you sign this complaint of yours during a meeting?
A Yes.
Q All right, now during that meeting did you read the first page of this exhibit and sign the second page, during that same meeting?
A I don't think I sign it right then.
Q You didn't sign it right then what?
A During the time my complaint was drawn & up.
Q Well is that the complaint, the first page of that exhibit, is that the co plaint that was drawn up for you?
A Yes, this is mine.
Q The first page of the exhibit, number 10, is your complaint?
A Yes.
Q All right, so you read the first page of defendants' exhibit number 10 before you signed the second page of defendants' exhibit number 10, is that right?
A Yes.
Q All right. And does page number 1 of defendants' exhibit number 10 state what your complaint was against Campbell Soup?
A Yes.
Q All right, at the time you signed it were there other, any other pages to that document, other than the two you have before you?
A Not as I can remember.
Q It was a two page document, the two pages you have before you?

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A Yes, this is two pages here.

Q And this is the two pages you had before you when you signed it?

A As far as I can remember, so much time passed during that time I can't remember everything.

Q Does the first page of defendants' exhibit number 10 accurately state what your complaint is against Campbell Soup?

A Yes.

Q Now at the time you signed defendants' exhibit number 10, you were in a meeting, is that correct?

A Yes.

Q Where was the meeting held?

A I don't know where it was, I can't remember. It was just a public meeting.

Q Was it inSumter?

A Yes.

Q Was there a large group of people there?

A Yes, it was a good crowd of people there.

Q You know Reverend Lewis?

A Yes.

Q Was he present?

A I was so busy attenting to the meeting I didn't look about and see who was there or who wasn't there.

Q Well who was doing the talking?

A I don't know the man's name talking.

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Q Was he a negro?

A Yes, he was a negro, but I don't know his name.

Q Can you say whether or not he was a negro minister in this community?

A I don't know whether he was a negro minister from this community or not, all I know he was a negro.

Q You don't know whether he was a minister?

A No, sir, I don't.

Q Now, did you know some of the other people who were attending the meeting?

A No, I didn't.

Q Were you invited to the meeting?

A I went to the meeting of my own free will.

Q How did you know about the meeting?

A By reading in the paper.

Q But you don't remember where it was held?

A No, I don't.

Q You notice on the second page of defendants' exhibit number 10 it is dated , October 4, 1966?

A Yes.

Q Is that the approximate date that you signed this exhibit?

A Yes, I guess it is.

Q All right, when you signed this exhibit, what did you do with it, after you signed it?

A Well I just signed it and left it.

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Q Did you leave it on the table?

A Yes, I just left it.

Q Were there a group of people coming up and signing it and another one come and sign it and it was left on the table?

A Idon't know, I just signed mine and left.

Q Were there others signed before you did?

A I didn't see that either.

Q Do you know who prepared this exhibit?

A No, I don't.

Q Did any one explain to you what it was?

A I know what that was because I, um, sign it.

Q Well did somebody tell you what it was?

A I know what it was.

Q Did you authorize anyone to file this with anyone?

A Well I file it, sign that with the um, Government --

Q Pardon?

Q The Government men, I talk to them about it,when I sign that.

Q Were the Government men present at the meeting?

A Not at that meeting.

Q When did you talk to the Government men?

A When they come down here.

Q This was later?

A Yes.

Q All right, but at the time you signed defendants' exhibit

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number 10, did you tell anyone that they could file this with the Government on your behalf?

A Yes.

Q Who did you tell that to?

A Well I don't know who it was.

Q Do you know an attorney in town by the name of Dorothy V. Sampson?

A I heard of her.

Q Would you know her if you saw her?

A I think I do.

Q Do you know whether or not she was at this public meeting you are talking about?

A As far as I can remember, I think she was.

Q Do you recall her talking at the meeting?

A No, I didn't.

Q Do you notice that Mrs. Dorothy Sampson's name is signed at the bottom of this?

A Yes.

Q Can you tell me whether or not her name was signed on this document before you signed yours?

A I don't know, because I didn't even look at what was there. I didn't know whetherthat was there before I signed ir or I signed mine first.

Q I notice that your name is the first name at the topm of the second page, is that right?

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A Yes, it is.

Q Was the rest of the page left blank when you signed your name?

A As near as I could reaall.

Q So as far as you can recall at the time you signed your name on the second page at the top there was no writing below that?

A Yes.

Q Is it correct that when you signed your name to this exhibit that you then left the meeting?

A Yes.

Q Mrs. Burgess, in your dealings with the South Carolina Employment Security Commission, do you consider that they treated you unfairly or discriminated again you in any way?

A No, I didn't been there but twice.

Q Do you think they treated you fairly when you were there?

A Yes.

Q When you took the finger test do you feel you were treated fairly?

A Yes.

Q Have any of the people working for the Employment Commission made any statements which would be derogatory towards you?

A What you mean by that?

Q Well, that were slanted against you?

A No.

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Q And I believe you testified when you went to the Employment Security Commssion, to go back a little bit, you asked to be referred to Exide Battery?

A Yes.

Q And they told you that you couldn't be referred out there but you would be referred to Campbell Soup?

A Yes.

Q Is it then true to say that the South Carolina Employment Security Commission is the one that recommended you, that you be referred out to Campbell Soup Company?

A She said that they didn't have no openings for ladies at Exide Battery, but I could take an application for Campbell Coup Company.

Q All right, you had not asked to be referred to Campbell Soup before they suggested it to you?

A No.

Q And then thereafter you were in fact referred to Campbell Soup Company?

A Yes.

Q Was there any delay in the South Carolina Employment Security Commission's referral of you to Campbell Soup Company?

A Delay, how do you mean?

Q Did they delay referring you out there?

A No, the lady just walk up and said, she asked could I help you and I said I come to fill out an application to Exide

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Battery, and she said I am sorry but we don't have no more applications for Exide Battery for ladies, but we have plenty of them for Campbell Soup, and you can get one of those, and I told her I would fill out one of those.

Q And did you?

A Yes.

Q And then what, did you turn it in to her?

A I give it back to her.

Q And then how long was it after that, well now at that time you did not pass the manual dexterity test?

A They didn't give it to me right then.

Q And thereafter you did go out to Campbell Soup Company?

A I went to Tec, after they start giving the applications out there.

Q How long was it from the time you had this conversation with the lady at the employment office, that you went to Tec?

A It was a couple of months, I don't remember exactly how long.

Q Do you complain, do you claim that the South Carolina Employment Security Commission refuses to refer, or delays the referral of negroes?

A What you mean by that?

Mr. Finney: We object to the question on the ground that what the South Carolina Employment Security Commission would do would be entirely within their knowledge. And further, that our complaint in this action alleges no, as far as I can recall

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does not refer to the South Carolina Employment Security Commission, except that they administered the manual dexterity test.

Q (By Mr. Deakins) Do you understand the question?

A Not exactly.

Q Do you claim the South arolina Employment Security Commission refuses to refer, or at least it delays referring negroes to a job opportunity?

A Yes, I guess.

Q What do you base that on?

A Delay the job that, you mean that, um, not giving colored people as many jobs, jobs like they should, that's what you mean?

Q Referring you, all they do is refer you.

A Well, they don't refer you to knwoing but domestic work.

Q They referred you to Campbell Soup, didn't they?

A I asked them.

Q You didn't ask them to be referred to Campbell Soup, did you?

A I mean, I didn't ask, not, but she asked me if I wanted to go to Campbell Soup.

Q Do you have any reason to believe that they, that the Employment agency refuses or delays referrals of you to Campbell Soup Company?

A I don't know.

Q Now is it your position Mrs. Burgess, that you have been

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discriminated against by Campbell Soup?

A Yes.

Q What do you base that claim on?

A On these tests, because the negroes don't have the opportunity to get the education that the white do, they don't have the time to go to school.

Q Now the tests you are referring to, is this Wonderlic test?

A That's right, also that um, the other test, I don't think that was much necessary.

Q What test?

A The hand, finger test.

Q The Campbell Soup Company didn't give you that test, did they?

A No, they didn't.

Q As I understand you thought you were given that test fairly.

A Yes, I did.

Q Do you claim there was anything wrong with the test?

A Wasn't nothing wrong with it but you had to bet it before you come to Campbell Soup Company.

Q Do you claim the manural dexterity test discriminates against negroes?

A No.

Q Or against you?

A No.

Q You passed the test, didn't you?

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A They say I passed, I don't know.

Q You don't claim the manual dexterity test discriminated against you, do you?

A No, it didn't.

Q So what test do you claim discriminates against you?

A This last test, but I didn't got a change to have it.

Q The Wonderlic test?

A Yes.

Q Is there any other way that you feel that Campbell Soup Company has discriminated against you?

A No, I don't.

Q Why do you claim that the Wonderlic test discriminates against you?

A Becase they know I didn't have the education enough to pass that test.

Q Do you know that you didn't have the education to pass the test?

A I know I didn't have the education to pass it.

Q Have you ever taken the Wonderlic test?

A No, I never have taken it.

Q Do you know as a matter of fact whether or not you could pass the test?

A By what Iheard some of them went out there and had the test, and how hard it was, I don't think would be.

Q You base that on what other people have said that took

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the test?

A Yes.

Q Have you ever looked over the Wondeilic test?

A No, I have not.

Q You don't know what the questions say?

A I don't know what it says.

Q Do you know how long you are given to answer the questions on the Wonderlic test?

A No.

Q You know what grades you are required to make on the Wonderlic test to get a job at Campbell Soup Company?

A No, I don't.

Mr. Deakins: No further questions.

EXAMINATION BY MR. FINNEY

Q Mrs. Burgess, in addition to signing the document that was shown to you by counsel for Campbell Soup Company,kdid you also sign a typrwritten letter, charging discrimination with Campbell Soup Company, on a yellow sheet of paper, or a white sheet of paper, and the carbon?

A Sometime, so much time has passed I don't remember yes or no.

Q Did you go to Washington to see the EEOC and the Civil Rights Commission regarding your chamges of discriminati n against Campbell?

A Yes.

Q At that time did yo leave with them in Washington a letter or

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charges?

A Yes, I did.

Q Was that letter or charges typewritkten?

A I think it was typewritten.

Q And it is different from what is on this piece of paper?

A Yes, it is.

Q Now did you read the early advertisements in the newspaper articles concerning Campbell Coming to Sumter?

A Yes.

Q Do you remember whether or not in the advertisements they set a grade level or anything like that?

Mr. Deakins: I object to that.

A No, they didn't.

Q (By Mr. Finney) Did they specify that you had to take a Wonderlic test in the advertisements?

Mr. Deakins: Object.

A No, they didn't.

Q (By Mr. Finney) Were you ever told by Mr. Partin or anyone else why you were not hired at Campbell Soup Company?

A No, I wasn't.

Q Did you go to school in the county, a county, where the situation was similar to the one that was talked about by Mrs. Pete Preston, where the school terms were shorter than those of the white children?

A Yes, the white children start to school first.

Q And stayed in school longer than you did

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A Stayed in school longer than we did. We had to pick all the cotton out the field.

Q How many classes were taught, how many grades, were taught in the room where you went to school in the beginning?

Mr. Deakins: I want to object to this whole line of questions.

Mr. Finney: All right.

A We didn't have but two classrooms.

Q And six grades in the school?

A That's right.

Q Three grades in each classroom?

A That's right, and two teachers.

Q Did you get free textbooks?

A No, we didn't.

Q D d you ride the school bus?

A No, we walked.

Q Did they have school busses for white children?

A Yes.

Q Did you school have electricity in it?

A No, it didn't.

Mr. Finney: No further questions.

EXCAMINATION BY MR. DEAKINS

Q Now I believe that you went to Washington to see the Equal Employment Opportunity people?

A Yes.

Q About your charge against Campbell Soup Company?

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A Yes.

Q That would have been about this exhibit number 10, would it not?

A Yes.

Q Is it true they went, that you went to Washington very shortly after you signed defendants' exhibit number 10?

A Yes.

Q In fact when you signed it you were on the way to Washington, weren't you?

A Yes.

Q And you went up there with a group of people, didn't you?

A Yes.

Q Who all did you up with?

A Just a groupf of people went up there.

Q Well, who were they?

A I don't know who they were.

Q You mean you went to Washington with people and you didn't know their names?

A Yes.

Q Who did you talk to in Washington?

A Well I talk to this EEOC people, and, it was so many place I just can't even remember, all the places we went to.

Q Did they take any statmments from you?

A We just sit and talk, like I talking to you now.

Q What did you tell them?

A About Campbell Soup?

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Q Yes.

A The same thing I got in that, um, this (indicating).

Q The same thing you put on defendants' exhibit number 10?

A That's right. And they find the same thing what we find, discrimination.

Q They said what?

A I say they find the same thing what we say on that same thing there.

Q Pardon?

A I said they find discrimination against us, the same thing what we said, they find to Campbell Soup also.

Q You are talking about the decision?

A Yes.

Q They didn't tell you that when you were up there in Washington, did they?

A Told us that here.

Q And you don't remember the names of any of the people you went to Washington with?

A No, not at the present time.

Q Reference Lewis, was he there?

A Yes.

Q Was Dorothy Sampson there?

A I don't know.

Q While you were in Washington do I understand you signed a letter up there?

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A I don't know. Ican't remember, it been so long back there.
Q Now you signed defendants' exhibit number 10?
A Yes.
Q Did you ever sign any other document that was given to the Equal Employment Opportunity Commission about your complaint of Campbell Soup Company?
A I signed the one that they give me, that is all I can remember.
Q You mean defendants' exhibit number 10?
A I don't know whether it was that or not, I just don't remember.
Q You say you signed what they gave you?
A Yes.
Q When was this now?
A I can't remember that.
Q In Washington?
A I signed that right here, in Sumter, I told you.
Q You mean this (indicating). Before you left?
A Yes.
Q That's defendants' exhibit number 10, isn't it?
A Yes.
Q All right, but after you signed defendants' exhibit number 10, do you recall signing any other document about your complaints against Campbell Soup Company?
A Not as I can remember.

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Q You don't remember signing any letters complaing about Campbell Soup?

A No.

Q Now, you said you saw some adds in the paper about jobs at Campbell Soup?

A I just read about different news, what they had in the paper.

Q And you never saw anything about the Wonderlic test?

A No, I didn't.

Q Now did you see these adds or articles in the paper before the plant was opened?

A I don't remember, I knowI saw some in there before it was open, but what it was about I can't remember what it was.

Q Was it before you filed your application, or around this period of time?

A Yes, before.

Q And were they talking about Campbell Soup Company was going to open a plant down here?

A Yes.

Q And they were going to need workers?

A Yes.

Q What else do you recall the paper saying about it?

A I just can't remember.

Mr. Deakins: I don't think I have any further questions.

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